

THE BRITISH JOURNAL OF DELINQUENCY

Vol. VIII

January, 1958

No. 3

EDITORIAL

This special number, published to commemorate the fiftieth anniversary of the Probation of Offenders Act, 1907, and in recognition of the work of the British Probation Service, requires no detailed introduction. Probation work, standing half-way between institutional treatment of offenders and ambulant treatment without formal supervision, branches out in many directions. While lack of space prevents us from giving a complete picture, we are glad to have collected contributions from representatives of a number of disciplines concerned with various aspects of probation; a professional judge describing and evaluating his work as Recorder in Quarter Sessions; a Home Office Inspector charged with the training of probation officers; a member of the Home Office Research Unit comparing the success rate of probation with that of other forms of disposal; two academic penologists studying contemporary developments in the United States and two countries of Western Europe. There are also Notes from the Chairman of the Scottish Central Probation Council reviewing the position in Scotland; from a former serving probation officer; from a clergyman giving a brief account of his observations as a voluntary social worker; and from the warden of a hostel for discharged prisoners trying to supplement the official after-care work of the probation officer. Last but by no means least we are privileged to publish an article by the spokesman of the National Association of Probation Officers asking some searching questions concerning the future of probation work and suggesting "a new impartial assessment of its position, its direction, its organization and its work." It is the hope of the Editors that this issue may stimulate further discussion on these and other aspects of an extremely important topic.

PROBATION WAS MADE FOR MAN¹

By WALTER RAEBURN (LONDON)

There are still those who think that probation in effect means 'letting off' an offender. In a sense they are right. There is a sense in which it can be said that the offender escapes punishment. So long as for a year or so he does not add a new offence to the old one, he may go home and return to a normal way of life, without either being 'sent away' or fined or otherwise made to suffer. It is true that he has a new and somewhat interfering friend thrust upon him. But even he himself does not always regard that as entirely disagreeable.

Nor is this a matter of mere expediency. It raises a moral issue of fundamental importance: whether it can ever be right that crime should go unpunished; whether indeed the fatted calf ought to have been killed for the prodigal son, while his well-behaved brother received no recognition for his virtue! It is as challenging as that. Despite the parable, ought justice to suffer wrong to go unrequited? The very thought comes as a shock. Punishment is as essential to ordered living as is washing to civilized society. Without it, wrongdoers will not be reformed, wrongdoing will not be deterred, justice will be unvindicated, and the injured will be without consolation. How can that be right?

If, then, probation means 'letting off' offenders, it would seem to follow that probation cannot be justified. It would so follow in truth—if the kind of punishment which probation excuses were the only kind of punishment which can be conceived. But whatever the dictionary definitions, punishment, for the purposes of the moral law, is to be regarded, not according to its nature, but according to its function. Whatever fulfils the purposes of punishment is, morally speaking, punishment. If you can shame rather than scare an offender into better ways; if you can divert others from offending, by demonstrating the advantages of doing right rather than the drawbacks of doing wrong; if you can inspire a respect for the law despite its mercy, rather than because of its

¹ Based on a paper read to the Scientific Group for the Discussion of Delinquency Problems on 3rd October, 1957.

relentlessness; and if you can console the injured with the sight of the guilty repentant rather than discomfited; then you have attained all that punishment should achieve; and that whether you call the method used 'punishment' or 'letting off'. Only two classes of person can deny that so long as the end is realized, the moral demand for punishment is satisfied: those who are too sceptical to believe that any but the usual means can achieve the end; and those who are so vindictive that they do not wish to believe in the force of clemency. What has, therefore, to be demonstrated (except to the vindictive, whose appetite is for gratification, not for persuasion) is that probation does indeed fulfil the essential functions of punishment.

The characteristic features of probation are that, without either the disgrace or the shelter of imprisonment, the offender is given a second chance to face life on his own responsibility. To equip him for this often difficult venture, he has the probation officer to guide him and the immanent prospect of imprisonment to steady him. Where he emerges reformed—as experience has shown that more often than not he does—it is for the right reason rather than for the wrong one. Instead of being forced to the trite conclusion that 'crime does not pay', he has discovered the ability and the way to go straight. The fact that the very price of being 'let off' is complete submission to the law for the future is a vindication of justice and right far more impressive than crude retribution. As for the deterrent effect of probation, and its justification in the teeth of the disappointed feelings of the injured party, these are matters which call for further consideration.

It must be frankly admitted that where offenders coming before a particular court can expect with some confidence to be placed on probation, that expectation is one which, in itself, cannot be counted on to deter other offenders. It has indeed been prophesied by experienced criminal judges that a court which pursued such a policy would soon attract within its jurisdiction large numbers of professional criminals from many other districts. That prophecy, however, has not been borne out in practice. There may be several reasons for this, besides the obvious one, that the market would soon be spoilt. The main reason is that professional criminals do not think in terms of what will happen to them if they are caught. Their concern is to avoid being caught at all. That is the occupational risk which they take seriously into account; not the risk of a heavier sentence should their plans miscarry. As regards the casual offender, he acts under influences or impulses in which the counting of the possible cost usually plays very little part. The assumption, therefore, that a policy of leniency operates as a positive encouragement to crime is based on a psychological miscalculation.

Nevertheless, the point is still not met that the deterrent element in punishment is forfeited if what is meted out to the offender has no terrors for

him. There are, of course, formidable moral objections to the whole principle of deterrence. It can be said that there is no virtue in making men do the right thing for the wrong reasons, in making them act honestly, not because they are honest, but because they are frightened. It has also sometimes been urged that to punish one man beyond his personal deserts, in order to discourage others from offending, is to visit on the body of that one the penalty for the potential sins of others. These propositions, and particularly the latter, raise philosophical and ethical issues of some interest. If, however, the practical choice lies between letting crime occur freely to be dealt with as and when it arises, and trying to discourage it by appealing even to less than the highest motives, then few thinking people will hesitate to seek its discouragement.

In any event, deterrence is a natural consequence of punishment, whether it is deliberately intended or not. In spite of the fact that there is a sense in which probation can be said to amount to 'letting off', the only true 'letting off' would be to ignore offences completely; that is to say, to have no criminal law at all. Probation falls far short of that. It does not abrogate the criminal law. It asserts and upholds it. No offender can claim probation as of right; and behind probation are the full sanctions of conventional punishment. Deterrence, therefore, whether sought or unsought, lurks in the principle of probation. For every potential offender knows that even if he stands the chance of escaping with a probation order, he also takes the risk of something much more disagreeable. He knows, too, that a probation order itself will bring him to the brink of the abyss, and will hold him there so long as it remains in force. If that essential fact is not brought to his notice, then the court which made the probation order does not know its business.

Far more difficult to deal with is the vindictive element in punishment. In this kindly age, when all violence (short at least of a judiciously placed atomic explosion) is condemned as unworthy of civilization, it has long been the custom to disown vindictiveness as an uncharitable intruder into the sphere of punishment. But its skin is thick, and abuse will not shame it into submitting to expulsion. Whatever the pious theorists may say, the victim of a crime, and the relations and friends of the victim, thirst to enjoy the discomfiture of the wrongdoer. What looks like excessive leniency is more likely to bring the law into contempt with the law-abiding than it is to encourage potential lawbreakers. The outraged mother of the little child who has been indecently assaulted will cry out bitterly against a probation order imposed on the unbalanced malefactor. 'Next time,' she exclaims, 'Dad will deal with him himself. What is the good of calling in the police and charging the man before a court which is so sorry for him that it sends him home and hopes he will be feeling better soon?!' Or again, the highly respected neighbour who acts as

treasurer for his street's Christmas savings, and in his despair borrows the fund to pay his overwhelming debts, will be far safer in prison than if he were returned home to the tender mercies of those who once trusted him. From every other point of view, prison may be the most inappropriate way of dealing with either of these offenders. But if the public lose confidence in securing justice in a court of law, there is a direct incitement to them to take the law into their own hands.

These, it is true, are instances in which the harm done to the victim is, in a sense, irreparable. Nothing can undo the moral shock to the assaulted child or give back their lost Christmas festivities to the members of the savings club. But in cases where the loss can be remedied by a money payment, the law does enable the court to accompany a probation order with an order for the payment of compensation within an upper limit of £100. The money may, of course, not be forthcoming. But the victim, who becomes a judgment creditor for the amount, usually stands a reasonable chance of recovering it in the near future from a probationer living at a known address and earning good money under the eye of the court. Whereas, if his debtor is a prisoner, whose very sentence is likely to impair his earning capacity, and who, when eventually he is released, perhaps disappears to a district where his record is not known, the victim's chances of redress are poor.

Nevertheless, and notwithstanding this available sop to the victims of a crime for which the offender has been placed on probation, the vindictive element plays an important, and sometimes a decisive part in determining how those who have broken the law should be made to atone for their transgressions. Which is just the point where theory and practice must part company. In theory, reform comes first in order as an object of punishment. In theory, therefore, a prison sentence, which will probably intensify the cravings of the sexual offender, and will very likely rob the once esteemed neighbour of the last vestiges of self-respect, must be utterly wrong. Yet practical considerations urge the court to precisely the contrary conclusion. For all her blindness, Justice must be eternally vigilant. Like every other expression of goodness and truth, her task is ultimately to reconcile contradictions. She finds them on every hand: the conflicting claims of society and the wrongdoer; the conflict between the evil influences which impel the offender to do wrong and his own inborn possibilities for good; the contradiction between his duty to his neighbour and the injustices with which life has persistently visited him; the inconsistency of the court having to treat alike for the same offence persons who individually need quite different handling; and the confounding of blameworthiness between the law-breaker, his parents, their parents, prevailing moral values, and sometimes the very victim of the offence as well. All these and other, even subtler, reconciliations fall to

the court to be effected before it can truly be said that justice has been done.

There is an answer to this. But it is one which, from a scientific point of view, simply, disarmingly simply, begs the whole question. It is summed up in the platitude that the judge must be just. It means that the reconciling factor in justice is not to be found in this or that check or balance, measure or degree, but in the personality, in the quality of the dispenser of justice himself. He must, indeed, be a person imbued not only with an instinctive fairness, not only with a spontaneous love of his fellow men, but with an imagination active and informed enough to foresee the effect upon all concerned both of his words and of his sentences, a faith to override all disappointments, the patience to endure criticism, abuse and ingratitude, and the courage never to yield to what he knows or feels to be wrong. If all judges were of that calibre, the science of penology would take its true place among the arts.

A conclusion, however, arrived at by the deductive method, which ends in a truism and postulates the need for an Olympian deity, can be of little practical value. Unhappily, the material is lacking for building up any more substantial conclusion by the method of induction. For that purpose it would be necessary to gather together a representative cross-section of actual cases collected over a long period from courts of every kind, and indeed over a wide range of varying penal systems. Whereas all that is available for the present purpose is the experience of one court of quarter sessions during a few years, and presided over by a man with no claim, in sufficient measure, to any of the above-mentioned qualities, but blessed with an admirable team of probation officers. This experience, while worthless from the point of view of supporting any reliable conclusion, is perhaps of some value, if only as an illustration of what is being done by way of experiment in the use of probation, and with what results so far.

To begin with, it is necessary to explain the overriding approach of that court to probation as a system. Certain cardinal principles are adopted.

First, probation is always considered as a possibility, and is rejected promptly if it is obviously inappropriate, and with reluctance if, for any other reason, it cannot be applied.

Secondly, it is not decided upon hurriedly. Elaborate inquiries are made, and everything is done to impress upon the offender the seriousness of the occasion and the caution with which he is being classified as suitable for probation.

Thirdly, the co-operation of the offender himself is enlisted where possible. He is made to understand that, in contrast to institutional treatment, he will have to stand on his own feet and be in the main responsible for his own life. He will have both to find and hold work, and to keep up a standard of good conduct. It is impressed upon him that the choice is his own, and that pro-

bation is being offered to him for his acceptance or refusal. The full conditions are, of course, explained to him by the bench in detail.

Fourthly, he is warned in the most unequivocal manner of the probable consequences of his failing to keep those conditions. Where it is practicable, he is given a seat at the back of the court later in the day so that he may witness what happens to lapsed probationers when they are brought back to be dealt with. Whenever there are such cases, he will notice that they are treated with as much severity as could possibly be fair.

Fifthly, where the offender seems irresponsible, but has a relative or friend who professes to believe that he will not offend again, that sponsor is invited to guarantee his good behaviour in a sum of money (varying with the circumstances) forfeitable should the offender break down before the period of his probation expires. It is fairly seldom that a probationer fails his guarantor; but when he does so, the guarantee is always exacted in full, although usually in instalments.

Sixthly, where the probationer has no home to which to return, the good offices of the probation officer are sometimes enlisted to find him somewhere suitable to live. The law only allows a condition of residence to apply for a maximum period of a year. In most cases, however, where the first year has ended successfully, the probationer settles down voluntarily either in the same place or at some other address agreed between himself and the probation officer. Nevertheless, the fact that an offender is of 'no fixed abode' (as the formal description goes) is generally one of the most formidable obstacles in the way of making a probation order.

Lastly, the duration of the normal probation order made in the court in question is two years. Very occasionally, where it appears that the offence was an isolated lapse and seems unlikely to be repeated, but that the guidance for the time being of a probation officer would be helpful, an order for one year (the minimum prescribed by the law) is made. Still more rarely the maximum term of three years is imposed. This has been used chiefly in the case of young men just about to be conscripted for two years' service in the armed forces. It was intended to give them the benefit of a year under the effective supervision of a probation officer when adjusting themselves to civilian life.

On the other hand, it sometimes happens that it is desirable to shorten the term of a probation order. That may be either because the probationer is so obviously reliable that there is no point in burdening the probation officer's case-load with his supervision any longer, or because he has a chance of exceptionally worth-while employment to which the existence of a probation order is an obstacle, or because a complete change in his circumstances, such as his intended marriage, makes it desirable that he should at once be able

to start with a clean sheet.

Another kind of case in which the discharge of a probation order even a few months before its expiration is sometimes expedient is where a probationer has obviously made a tremendous effort to keep out of further trouble and is finding the strain of working out his probation order psychologically exhausting. By all the canons of reason and common sense that should be a ground for keeping up the pressure (and support) of probation to the last possible moment. It does not, however, so work out in practice. There have been several cases within the experience of the court in question in which probationers, who were doubtful starters but made good with astonishing success, have suddenly broken down almost in the last month of their final year. The probabilities would seem to be that, had the tension been relaxed by the discharge of the order a few months ahead of time, the temptation to revert to type would not have overwhelmed them. The experiment would anyhow have been worth trying. Be that as it may, the policy of discharging certain orders early is still in its experimental stage. All that can so far be said is that out of about nine cases in which it has been tried there have so far been no known failures.

In some quarters, the impression still prevails that probation is appropriate only for children and 'young persons'. The experience of the court referred to seems to demonstrate that that is wrong. On the contrary, such failures as there have been, have been consistently more numerous among the young offenders than among the adults, even though the latter have included men some of whom have had long criminal records. The reasons, in fact, for placing the younger offenders on probation are often quite different from those applying to the more mature. With the adult it is largely an act of faith, the result of a genuine compact between himself and the court, in which he experiences for the first time both the elation and the responsibility of being trusted by someone who is wide awake to the depths of his villainy. The young offender, on the other hand, transgresses as a rule because he is unstable and untrustworthy rather than fundamentally bad. The risk in leaving him his liberty is high. But the risk of impairing his stability yet further, if he is placed in an institution and relieved of much of the responsibility for himself, is higher still. Granted a certain background and a certain degree of corruptness of mind, then institutional training may be the only answer. But short of that, probation is usually worth trying for the young offender, even though it is frequently something of a gamble with the odds the wrong way. The point is that, if it comes off, a whole life may be saved from the taint of a criminal record. Moreover, so far as the available examples go, very much more often than not, it does come off.

What will or will not come off depends, however, on a further, usually

decisive, factor—the capability of the probation officer. This again is neither constant nor absolute. The same officer may succeed with a probationer of bad character and yet fail with one who is merely unsettled; he may show better or worse results according to the saturation point of his case-load; his work with fifty probationers may be impaired because of the demands on his time and his emotions of only one. Needless to say, the nearer he comes to perfection, the narrower is his margin of failure due to all or any of these factors. But the court cannot and should not count on perfection even in the best officers. Their personal limitations should be known and taken into consideration. Consequently, it is of the first importance that policy should be understood, agreed and co-ordinated between bench and probation team.

Nor is it enough that this should be done in general. In each several case the court should consider the personal impact on one another of the proposed probationer and his prospective probation officer. Easily as this is said, it is not easy to carry out. In the court here used as an illustration, there are two men and two women probation officers working under a senior probation officer. Not only does the personnel change from time to time, but the quality of the officers and their particular bent is not consistently even. The necessity for distributing the work, in which the court has no right to interfere, also makes it uncertain which particular officer will handle any given case. Added to which, there is the inevitable complication that an offender who lives (as he may well do, and often does) outside the jurisdiction of the court will come for the purposes of probation under his local probation officer, who is generally an unknown factor to the court.

These considerations, so commonly arising in practice, would seem to stultify the whole object of close co-operation between the bench and its senior probation officer. That would inevitably be so, if the success or failure of each probation order really stood or fell with the apt matching of probationer and officer. Fortunately that is not so. A probation officer, even of mediocre capacity, can usually cope with any but the most awkward of offenders. The problem for the court in this regard is to recognise such ‘awkwardness’ when it is there. It is for this purpose that it is generally unwise and often wrong for the court to impose probationers on an officer without first consulting him. Truly enough, prisons have to accept what is sent to them, and to make the best of it. But prisons have compulsive methods at their disposal, and they are not blamed if their reformatory efforts yield no fruit. The personal relationship between the probation officer and the probationer is almost the only sanction on which the acceptance of treatment has to depend. To expect a good relationship of that kind to be forthcoming ‘to order’ is presumptuous on the part of the court, and can sometimes be a tactless affront to the dignity and self-respect of the probation officer.

Here, however, a practical difficulty again presents itself. Apart from the fact that the probation officer available for consultation will not necessarily be the officer to whom the case will eventually be allotted, and assuming that the court must be content with a general expression of opinion by an experienced officer as to whether or not the case seems to be suitable for probation, it still does not follow that an opportunity can always be forthcoming for such an opinion to be reliably formed. In a magistrates' court a case can generally be remanded for a week to enable the probation officer to look thoroughly into all the relevant circumstances. But at quarter sessions, and notably in the court in question, this is not practicable. The sessions rarely sit for more than a few days, during the whole of which the presence of the senior probation officer is liable to be required. At the most, therefore, if a case is put back for a short while, he can interview the prospective probationer in the custody of prison officers outside the court, and form a spot opinion. To that course, besides that it is dangerously superficial, there is a further objection. Quite obviously, an offender whose case has been put back so that he may be interviewed by a probation officer, has his hopes raised that he will not receive a prison sentence. This creates an embarrassing situation alike for the probation officer and for the court. If the probation officer eventually pronounces the man unfit, in his opinion, for probation, he will naturally incur the odium of being personally responsible for the offender's being sent to prison. Equally, the court, having led the offender to conclude that he had not plainly deserved a prison sentence, may feel strong moral pressure to refrain from occasioning all the disappointment and misunderstanding that would result from after all imposing such a sentence.

If it has to be practically a foregone conclusion that a case once put back for a report by a probation officer will in the end be dealt with by a probation order, it would be far better for such an order to be made in the first instance without further ado. Yet such a practice would, as has already been observed, discourage, if not offend, the probation officer. It is sometimes advisable to compromise. Where it seems obvious that the probation officer would surely, if consulted, accept the case, the court might venture to make an order in anticipation of such acceptance. Where, on the other hand, there are appreciable obstacles, such as that the offender is 'of no fixed abode', or that he is in need of psychiatric treatment, or that there are domestic tangles to be unravelled before he can safely be sent home, then the assistance of the probation officer should be invoked as something very much more than a matter of form, and the case should be put back pending careful inquiries. It must be put back, if necessary, to another day on which the court will sit specially, and the court must then refrain from formally closing the sessions meanwhile.

In such cases it often happens that diligent action on the part of the

probation officer is also required. He may have to seek lodgings in which the offender can be accommodated, or an institution in which he can be accepted for treatment, or a friend who is willing to sponsor him. Or he may have to visit the home and effect a reconciliation between the offender and his parents or his wife or as the case may be. He may also have to make sure that immediate employment is available for the offender before it is safe for the court to place him on probation.

This emergency aspect of the making of probation orders is one of the most anxious of all the problems associated with the effective use of probation. Unless the court is determined not to deprive an offender, felt to be otherwise suitable for probation, of his chance of making good without further punishment, the temptation to take the easy course and impose a sentence of imprisonment is very strong. It would all be made so much easier if it were possible for probation officers to act along parallel lines to the police, and to come to the court in every case already armed with all the necessary information about the offender and his background and available possibilities. But unless an accused person has already intimated his intention to plead guilty, that cannot properly be done. Even with the most benevolent intentions, a probation officer is not regarded as justified in visiting the home of an accused person or in interviewing him (except at his own request), or in reporting to or discussing with the court in advance, however informally or confidentially, any matters concerning the case. To pursue such inquiries uninvited is looked upon as an unwarrantable invasion of personal privacy. At the same time, any kind of provisional preparation by the court for dealing justly with an accused person in the event of his being convicted is thought to poison the very source of justice. It amounts to contemplating even the possibility that someone might not be innocent who had not yet been found guilty. Consequently, the court is driven to making emergency decisions on inadequate data. Which means that in the name of preserving the theoretical integrity of justice, the effective administration of justice is jeopardized in practice.

Another difficulty which sometimes faces the court in seeking to reconcile justice with mercy is illustrated by a recent case. Two young men, both aged 26, and each of them married and with family responsibilities, were found guilty of breaking into a house and stealing property to the modest value of about £5. One of them, C.T., had been before the same court some five years earlier, and had then been placed on probation for two years. Although he was not an easy probationer to handle, he had in fact completed the period of his probation without further trouble. Later on, however, he had broken down again, and was twice before the Magistrates' Court. A fine on the first of these occasions did not deter him; and the second time he served a fairly

short sentence of imprisonment. Despite this taste of prison, here he was, offending again, and apparently quite without remorse. A further period of probation seemed wholly inappropriate. It would not even have been considered, had it been possible to regard his case in isolation from that of E.J., who was convicted with him. The latter had, on paper, a criminal record too. But it amounted to little: a juvenile transgression, a conviction for poaching, and one petty theft; for each of which he had been fined. Had it not been that his case was mixed up with that of C.T., probation seemed clearly indicated as the way to steady him for the future.

It was, of course, possible to discriminate between these two men. But the detective sergeant who gave evidence as to their characters answered the court's question as to which was the bad influence on the other, by expressing a decided view that there was nothing to choose between them in relation to the offence being dealt with. What, then, should be done? However much in theory a prison sentence for C.T. and probation for E.J. could be justified on the ground of what each respectively needed, the impression conveyed by dealing unequally with two men, for a joint offence of which they were equally culpable, would be that C.T. was being punished over again for the past offences for which he had already paid the penalty. The choice, therefore, was between prison or probation for them both. Which was worse? To deprive E.J. of a chance on probation for the sake of adequately punishing C.T., or to burden a probation officer with so unsuitable a subject as C.T., simply to avoid being harder than absolutely necessary on E.J.? In the end, the more merciful course prevailed—with what results, it still remains to be seen. This much can at least be said, that the unrepentant look vanished from C.T.'s face during the very stern warning with which the making of the order was accompanied, and that when seen afterwards by the probation officer he was in a distinctly chastened mood.

The effects of tempering justice with mercy are unpredictable. Several years ago two housebreakers came up together for sentence. The one was aged 48, a married man with a large family, a heavy drinker, and with a record of two previous convictions. The other, 28 years old and a bachelor, had a clean record. Both were placed on probation. Within nine months, the younger man (the first offender) broke down again and was convicted of burglary; whereas the man with the criminal record dropped his drinking habits, became a steady worker, settled down with his wife and family, and completed his period of probation satisfactorily.

In another case, two men, the one aged 27 and the other 32, both married, broke into an office together and were caught there before they had had time to take anything. On probation, neither was actually in further trouble. But the younger man, who had no previous convictions, was reported by his

harassed probation officer to be persistently lazy and unco-operative; and by remarkable contrast, the other man, who had no fewer than nine previous convictions, so much appreciated the chance given him that he became what the probation officer described as a 'reformed character', and eventually completed a long probationary period of three years without ever faltering. The act of faith was justified.

So often that has happened; but one case in particular is worth recording. A gang of four young men went out one night on a burgling expedition. The ringleader was a curly-headed youth aged 19. He did not look like a criminal type, but he was undoubtedly in a very ugly frame of mind. Tension with a strict father about the hours he was keeping had produced a mood of rebelliousness, and he had, within a few weeks, become a defiant and persistent offender. The magistrates had seen fit to pile fine upon fine; and he had reached a stage at which his only chance of paying his fines was to steal the money. Whether, even so, in his existing frame of mind, he ever meant to pay, is another matter. Now that he was at last before quarter sessions, the police were contemplating with relief his undoubtedly being sent to Borstal. Nevertheless, to quarter sessions it seemed otherwise. The act of faith dictated probation. And not in vain. To begin with, the admirable senior probation officer had a hard struggle to overcome his selfish and stubborn resentfulness. But gradually he yielded, settled down to work, courted (and eventually married) a girl who exerted a really good influence over him, and little by little paid off his fines. He had finished with crime.

It would not, of course, be fair to deduce from this that if he had been sentenced to Borstal training the final result would have been any less satisfactory. Very probably it would not. The point, however, is that where the taxpayer can be saved probably 18 months' outlay at about £9 a week, where the offender can be spared the stigma and other inevitable disadvantages of becoming a 'Borstal boy', and the desired end can still be achieved, then let it be achieved wherever possible by the cheaper and more humane method of probation.

Examples, although probably less dramatic than that just mentioned, can be multiplied many times from the records of that particular court. But for them, it would be difficult perhaps to support the contention that unpromising characters can often be satisfactorily dealt with without having to resort to the more conventional sentences. There are, in fact, other cases in which the honours could be regarded as even. Four men broke into a local political club one night and stole the cash from a charity collecting box. The sum was a small one. Man No. 1 was aged 29, No. 2 was 24, No. 3 was 32 and No. 4, 28. All were married men; but No. 2 had made an improvident marriage overseas while still under age, had very soon been deserted by his wife, had

since lived a roving, unsettled and unloved existence, and had had eight previous convictions for offences involving dishonesty. No. 4 was on bad terms with his wife, and was a good-for-nothing irregular worker, but had not been in trouble with the courts. Although neither of the other two had criminal records, they were likewise very unreliable, and No. 3 was a loafer. Probation was tried in all four cases, with varying results.

No. 1 was unlucky enough to have had hanging over his head, at the date when the probation order was made, a criminal charge in another court, which eventually sent him to prison for nine months. On his release, his probation order took effect again, and he completed his term under it most successfully. Was that because of or in spite of the prison sentence? Either proposition is maintainable.

The case of No. 2 was different. He responded astonishingly well to probation. It took him some time to abandon his grudge against life and to acquire a new outlook. He did, however, improve both in happiness and in behaviour out of all recognition. Then, all of a sudden, in the last month of his two years on probation, he succumbed to the temptation to steal a quantity of scrap metal valued at ten shillings, and ended up back in prison after all!

Both No. 3 and No. 4 justified their probation orders. Both abandoned their idle ways, settled down to regular work, and made good. In addition, through the good offices of the probation officer, No. 4 became reconciled with his wife, and his life was worth living again.

A converse case is of interest, in which, with calamitous results, a probation order was not made. R.H. was an elderly man employed in a position of trust. His was one of those tragic cases in which, having been made treasurer of a slate club, he used some of the funds to pay his pressing debts, and lost the rest in a desperate attempt to restore the position by gambling. For the reasons already discussed, it was impossible to avoid inflicting a prison sentence on him. Unhappily, the result was a complete collapse of the whole edifice of his family. His wife was a weak type of woman of a low mentality. Left to cope with a number of small children and no resources, she simply went to pieces. The eldest boy, then aged 14, was bowled over by the disgrace which had come upon the father to whom he had always looked up. His mother's distress also deeply affected him. With a lad from next door, he raided the food store of a local school and stole a quantity of tinned goods, bringing some home and selling the remainder to a dishonest café proprietor. The mother knew that the boys had stolen the food and she hid it about the house. Eventually, the two boys were convicted of stealing, and Mrs. H. and the café proprietor of receiving. The boys were placed on probation. The court spared Mrs. H. too, particularly in view of the plight of the

home and the younger children. This mercy was not misplaced. The friendship and understanding of the woman probation officer restored to Mrs. H. her lost self-respect, and helped her to re-establish order and cleanliness in her home. When R.H. was released from prison, he came back to encouraging surroundings in which he too was able to reinstate himself.

It must, however, be recorded that his boy did not recover from the shock so readily. When he left school and went to work, he stole from his employers on one occasion, and had to be sent to an Approved School. But there he responded quickly to treatment and, when he was licensed, the headmaster reported that he was one of the best and most reliable boys whom he had ever had in the school. An interesting instance of how probation will often work more effectively in the case of adults than of young people.

It would be possible to add illustration to illustration; and yet to prove so little. What perhaps is most plainly indicated is that, used in the right way, probation can be and has been made to work over a surprisingly wide range of cases, rendering the grimmer and more expensive alternatives unnecessary, if not positively undesirable. The fact that failures must be recorded as well as successes affords no ground for discouragement. If there were no failures, it would follow that probation was being used with excessive caution. It is the failures which shine, as it were, the red light that makes it possible to gauge the point where the limit is being approached.

Sometimes the limit is thought to have been reached when the offender has clearly been shown to be a man with a bad record. But the proposition does not stand the test of experience. The fact that in a number of cases, where probation was successful, the offender had multiple previous convictions is remarkable or not according to the view taken of the significance of a criminal record. Superficially, a recidivist is a recidivist, and an offender's record constitutes his 'character'. But this is superficial indeed. No doubt the fact that a man has repeatedly been convicted of crime indicates, as a simple matter of common experience and common sense, that he is not a person of good and reliable character. Leaving aside, however, such obvious qualifications as that many persons of 'good' character are such merely because they have not previously been caught, and that the cleverer the rogue the more frequently he will probably escape detection, there are other and deeper fallacies to be found in relating the appropriate punishment directly to the list of previous convictions.

Recidivists are, in fact, of many different kinds. There is first the so-called 'professional' criminal. This mock dignity he acquires by virtue of his being, like a professional man, a trained expert, devoting his special knowledge and skill to crime, as the career on which he depends wholly or mainly for his livelihood. He works, as a rule, in an organized team or gang (one

might almost say, 'firm') in which each of the members (or partners) has his allotted function. Like the soldier, who deliberately risks death or wounding, he runs the risk of imprisonment, be it for a long or a shorter term. Like the soldier again, he learns how to take cover and to minimise danger, except where the stakes are very high or the emergency is dire. Like the soldier, he glories in exploits far more numerous than his scars. His criminal record is normally but a pale reflection of his crimes.

Similar to him, and yet in a different category, is what might be called the 'specialist' in crime. He is usually a lone wolf who has just one technique, which he repeats over and over again. There is the smash-and-grab thief, who operates the simple process of throwing a brick through a shop window in the quiet of the night, snatching what he fancies, dodging down convenient side-turnings, and disposing of his booty in the early mornings among the riff-raff in the produce markets. There is the bogus estate agent, who collects deposits from numerous home-seekers of small means and with an urgent need for a roof over their heads, by professing to arrange for them each in turn the tenancy of the same empty flat. There is the 'flannel-foot' burglar, who has discovered how to climb silently into suburban bedrooms, help himself to little pieces of jewellery from the dressing-table drawers, and slip out again unobserved—to repeat the same process night after night in ten or a dozen dogless little houses along the selected street, before going home by the early morning train. There is the confidence-trickster, who picks up his victims in bars and hotel lounges. There is the bogus meter inspector or window cleaner. There is the man who extracts subscriptions as 'secretary' to a non-existent charity. And there is an almost endless variety of other swindlers and sharpers of different kinds. But all these have two things in common: first, that each works to an almost invariable pattern of his own; and secondly, that having found success coming so easily, and so much more profitably than the wages of honest work, it seldom happens to any that he can refrain from trying his fortune at the same game again, however many times he is at intervals caught and punished.

It is in this respect that the 'specialists' differ in type from the 'professional' criminal. The latter is always watching the police, and adjusting his methods so as to defeat their vigilance. The 'specialist' plays straight and ingenuously into the hands of the police. If he knows (which he probably does not), he does not heed the fact that the police files record the methods as well as the personalities of known criminals. Once these have been co-ordinated, following the conviction of the habitual operator of a particular technique, the repetition of the pattern works almost like a finger-print. The police know at once for whom to look; and an arrest usually follows before very much further damage has been done. Owing, however, to the obsession

in the mind of such offenders that what has once paid good dividends must do so again, their criminal records lengthen with positive prodigality. In the result, on paper it is petty criminals of this type whose characters appear a great deal worse than those of the 'professionals', who prey on the public far more extensively but with a much higher degree of immunity.

It is a sad but inescapable fact that neither the 'professional' nor the 'specialist' type of offender can ever be expected to respond to probation. The case, however, is quite otherwise with several other types whose records look on paper just as formidable.

It would be dangerous and unwarrantable to hazard a guess as to how many reputable citizens have at some time or another broken the law, and have escaped justice. John Bunyan's famous reflection does not fit only the purely innocent. Some, however, there always are who are found out; and it is in this respect alone that they differ from the many who are not. Indeed, in the case of a first offence, many courts are tacitly inclined to recognise this. The real problem arises when the same person is caught offending again. Does that unmistakably indicate a 'bad character', or can it be said that the offender is no worse, but only simpler and more ingenuous, than the general run of his 'non-offending' fellow men? All that can be answered is that the indication is not unmistakable. The court should look beyond it for other indications. It should watch the pattern of the offences to see if they show a deliberate system or seem to be unconnected and casual. It should study the other behaviour of the offender in order to assess whether he is really guileless or weak or wicked. Each of these elements is material in considering whether or not he would respond to probation; that is to say, whether, if not otherwise punished, he would in future refrain from offending again.

That, perhaps, is the most difficult kind of recidivism with which to deal, because the line between weakness and wickedness is so seriously blurred. It is clearer in those cases where there is an ascertainable recurrent cause which accounts for periodical relapses into crime. Not uncommonly, one finds an offender who, on coming out of prison, cannot disentangle his feet from the net of crime. Various reasons may account for this. The very fact of his having been to prison may have ruined his life. It may have broken up his home, lost him his friends, shut him out for ever from the only occupation for which he has been trained, and shattered his reputation and credit. In such a case, the pressure towards the underworld is obvious. It is also obvious that each further sentence of imprisonment can only serve to confirm his membership of the criminal community. If, by that time, he has acquired a real criminal mentality, then his liberty will only endanger the public without doing anything to change the man himself. But if, as is so often tragically the case, he is a criminal only by force of circumstances, and contrary to his

own better nature, then his will be one of those cases in which the unexpected trust of the court, supported by the friendship of the probation officer, may break the vicious round of crime and punishment, and help him back again to an honest way of life.

Similar to this case is that of the inadequate, who, although not under direct pressure to commit further crime, has not the strength of character or personal initiative to face the hazards and temptations of liberty. This is the kind of man who has generally 'graduated' from one institution to another ever since his boyhood. Wherever he has worked under discipline, his conduct has been irreproachable. Each institution in turn has found him entirely satisfactory. Yet, whenever he has gained the freedom he has so much coveted, he has never known how to stand on his own feet. The short and easy remedy (sparing the public no expense) is to return him promptly to prison. But whether that is either imaginative or humane is another matter. This (as has been assumed) being a case where the man has no taste for crime as such, but commits crime simply because he does not see how to avoid it, to send him back to the temporary shelter of prison is merely to stifle the symptom without touching the disease. But probation, if properly applied, would afford an opportunity of instilling into him the self-confidence he needs, and at the same time of guiding him steadily away from the temptations which keep besetting him.

A criminal record is therefore a most ambiguous index of penal deserts. It certainly cannot be ignored. Nor should it be discounted. On the contrary, it calls for the most careful study; for while it does not (despite the jargon of the courts) constitute a man's 'character', it can, if properly analysed, throw valuable light on what that character may be. The number of convictions is not the decisive factor, nor of itself is the nature of the crimes. What is most revealing is the pattern of the record; that is to say, whether it shows consistency or variety, whether the convictions are concentrated within a short period or spread out over a long one, whether the seriousness of the offences shows an increase or decrease, fluctuates or remains constant, and what kind of response is indicated to the various ways in which previous offences have been dealt with. Even then, the record should be considered in relation to the offender's history and background. Inquiry is called for into the correspondence in time between the commission of offences and any disappointments, bereavements, financial difficulties, loss of employment, association with particular persons, or other like circumstances. Only in this way is it possible to judge, with the help of the record, with what kind of recidivist the court is dealing and, accordingly, what kind of sentence is really appropriate. The course which is certainly wrong, notwithstanding that many foreign penal codes positively prescribe something of the kind, is automatically to deal

more severely with each successive offence. The principle behind that simple rule is presumably that what was insufficient the last time to deter the offender from offending again would not be enough to do so this time either. But the factors which have to be overlooked in order to support such a fallacious proposition have already been demonstrated.

Whatever may be regarded as still in controversy, and whatever may be taken as established, this much does seem clear: that probation should not be limited in principle or in practice to any particular class of offender or to any special range or degree of offences. Neither the age of the offender nor his criminal record nor yet the gravity of what he has done ought of itself to be an insuperable bar to the making (where the law so permits) of a probation order. All these things are, of course, matters to be taken into serious consideration, and some of them must weigh heavily in the adverse scale. The decisive factor, however, must always be subjective. 'In the circumstances of this particular case,' is the question, 'will probation fulfil the objects of justice?' If it will successfully check the repetition of the offence by the existing offender without encouraging its perpetration by others; if, by helping to keep down the population of overcrowded prisons, it will enable those institutions to carry out their therapeutic policy more effectively, without impairing the dignity of and confidence in the law; and if, by sparing the wrongdoer the further, greater and more lasting social punishment which attends him on his release from prison, it turns the discount on his chances of an honourable future into a premium; then probation will have promoted the cause of justice. Let those who would have kept the fatted calf for the elder brother's next birthday say what they will. Let them object that crime calls for punishment, and that probation is 'letting off'. Probation was made for man, not man for probation.

WHITHER PROBATION?

BY FRANK DAWTRY (LONDON)

After fifty years, the Probation Service may well look back with pride on its achievements, but it is more concerned to look forward. It does so in the knowledge that it must keep itself up to date, equipped and able to turn modern knowledge to the advantage of those for whom it is called upon to work, while not losing the basic belief, on which the Service was founded, in the value of every human person.

Fears are sometimes expressed that, as in other fields science seems likely to replace the arts and humanities, so in the field of delinquency and its treatment the modern uses of psychiatry and the scientific analysis of human conduct may conflict with and replace what is regarded as the human and personal approach to behaviour problems. The Probation Service stands in this situation as one in which the daily contact with delinquents and others in trouble obviates any possibility of purely human relationships being abandoned, though the awareness that intuitive responses are not sufficient leads it to turn increasingly to the expert for assistance and to search for greater knowledge for its own use.

The Probation Service itself came into being because of the efforts of those who were in their own day in advance of their time. They saw, or felt, that the long chapter of violence and repression in the treatment of crime should come to an end; that the centuries of torture and violence, banishment, execution and imprisonment had succeeded only in separating the offender from the community, whereas it should be possible to regard the offender as still being a member of the community and to remind the community of its responsibility for him. This idea, developed by the early penal reformers, was built on by those who thought that many offenders need not go to penal institutions at all. These were the pioneer missionaries who met offenders in the police courts and offered them advice and friendship, and their work was recognized in the Probation of Offenders Act, 1907¹ which established the Probation Service.

The early organization was loose, the probation officers were paid by fees for each case undertaken, and their efforts may now be regarded as being

¹ Probation of Offenders Act, 1907 (7 Edw. 7. CH. 17).

elementary. They worked largely in a belief that human beings could be helped by example and exhortation or that practical work involved only an adjustment of circumstances. It was disappointing when apparent failure showed that it was not enough to change a man's conditions when he was in any case unable to cope with life, or to set an example he could not comprehend.

Nevertheless the early probation officers achieved remarkable success, and from its earliest days the Service has groped its way forward, its wiser members ever seeking greater knowledge, more information, and a proper understanding of problems with which they had to deal. It is an endless search. But the urge to know where it is going, the desire to improve its work, are manifestations of what might be called divine discontent amongst probation officers, and in modern days the urge is more insistent than ever. Can the Service cope with all the demands on it, can it man all the posts where it is needed, is its training on the right lines, does its organization need modernizing? These and a dozen other matters are of urgent concern today, and the knowledge of its own limitations becomes at times a source of anxiety and discontent which expresses itself in distrust of authority and anger about inadequate recognition of the difficulties of the work or reward for its labours. Probation officers are familiar with the tributes paid to them by magistrates, judges and even Home Secretaries, but the pat on the back for doing a good job is sadly reminiscent of the days of underpaid patronage in which the Police Court Missionaries lived. Probation officers know that their work is of tremendous importance to the community (or they could not go on with it) but they feel that the tangible recognition of this by the community shows little real knowledge of its value. They are, however, not concerned only about material rewards. They are aware of the still inadequate public understanding of what probation is seeking to do, they know that in recent years the Service has grown on an old foundation without time or opportunity to sit back and think, and they are sadly conscious of many shortcomings. They feel, in fact, that after fifty years of endeavour it would be a most useful thing for their progress to be examined and for a public assessment to be made of both the work and the organization of the Probation Service.

Such an assessment would not be a new experience. Although the first probation officers did not start their work until January 1908, a Departmental Committee was appointed in March 1909 to examine the workings of the 1907 Act. This Committee² noted considerable variations in the use of probation by the courts, and suggested that magistrates should be educated in the meaning of probation. It also expressed the opinion that a case-load of

² Report of the Departmental Committee on the Probation of Offenders Act, 1907 (1909), Cd. 5001.

sixty was a desirable maximum for a probation officer dealing with people on probation for short periods.

The first world war threw up many social problems with which the new Service had to cope and in 1920 another Departmental Committee³ was appointed. It reported in January 1922 that there were 784 probation officers but that most of these were voluntary workers, each with few cases and occupied in a large variety of other employments. Only a small number were permanent full-time officers. The main recommendations of this Committee were that wherever possible probation officers should be employed only on probation or similar work, that remuneration should be improved and should be by salary and not by fees, that every court should have a probation officer at its disposal, and that a Government grant should be made towards the cost of probation. It also recommended that an Advisory Council should assist the Home Office, as the central authority, and that this should be responsible for some form of training for probation officers. But the standing of probation at the time may be measured by the Committee's comment on a suggestion that University training should be available for probation officers; it pointed out that men and women who went to Universities usually did so to fit themselves for a professional career and it was doubtful whether probation would attract candidates with University training.

The main recommendations of this Committee were embodied in the Criminal Justice Act of 1925,⁴ and from that time onwards the Service has been gradually transformed into one almost entirely of full-time officers, paid from public funds, though recruitment for long remained local and haphazard, while only a tentative beginning was made with training. A further and more important Departmental Committee was appointed in October, 1934 and this recognized probation as a modern social service. Its Report⁵ recommended that there should be a Training Board allied to the Advisory Council; it suggested that probation officers should have knowledge of public administration, and that they should have sufficient knowledge of psychiatric method to enable them to detect who would benefit from expert diagnosis and to follow up any line of treatment recommended by the specialists. This Committee regarded a University training, to be followed by a specialized probation training course, as desirable and urged that no time should be lost in launching a comprehensive training scheme. It also laid down for the first time a national scale of salaries. Its Report has been the basis for many subsequent developments in the field of probation.

³ Report of the Departmental Committee on the Training, Appointment and Payment of Probation Officers (1922), Cmd. 1601.

⁴ Criminal Justice Act, 1925. (15 & 16 Geo. 5, CH. 86).

⁵ Report of the Departmental Committee on the Social Services in Courts of Summary Jurisdiction (1936). Cmd. 5122.

It is interesting to note that in the first twenty-eight years of the Probation Service, when its basic nature and duties altered little, there were thus three enquiries into its work, whereas during the last twenty-two years, while its work has undergone tremendous changes, no impartial assessment of these or of their impact has been made.

It may be useful to summarize some of these changes.

The basic work of the Probation Service has always been with offenders placed on probation, and this remains so. Its work in this field has continued in a period of extreme pressure, largely due to the increase of crime during and since the war, but it has continued also in a period of subtle change. Case-loads are heavy, but they tell an inadequate story, for the nature of the loads has altered. Probation, once used for the simple or youthful offence, is now regarded as a form of treatment for serious social problems where the work of well trained caseworkers is required. Many of those placed on probation by the courts today are seriously disturbed people who need a long period of supervision and intensive casework, rather than simple friendship and guidance. This in its turn has contributed to the demand by probation officers for more knowledge and greater understanding of their own motives and a parallel increase in their understanding of the motives and needs of those with whom they are called upon to deal. The elementary and intuitive approach of the pioneers has been replaced, and the probation officer of today is a qualified caseworker who sees his task as that of establishing with each individual in his care a relationship within which that individual can achieve greater understanding of himself and be assisted to make the necessary adjustments which will enable him to lead a happy and socially acceptable life.

In addition, however, to a change in the intensity and depth of its work, the Probation Service has accepted many responsibilities in the wider field of delinquency or of the social work of the courts. The Report of the 1936 Departmental Committee suggested that probation officers should not be recommended to undertake the aftercare of discharged prisoners, and should only undertake the aftercare of those leaving Borstal Institutions or approved schools where other arrangements could not be made. Nevertheless the 1948 Criminal Justice Act⁶ led to the establishment of the Central After-Care Association and the acceptance by probation officers of a statutory duty to undertake the aftercare of prisoners discharged from corrective training and preventive detention, certain young prisoners, all those discharged from Borstal training, and those coming from approved schools where the managers so require. Subsequent Probation Rules⁷ have added to this list certain

⁶ Criminal Justice Act, 1948 (11 & 12 Geo. 6. CH. 58). 5th Schedule 3 (5) and Probation Rules 1949. (S.I. 1949. No. 1328 (L. 11.)).

⁷ Probation (No. 2) Rules 1952. (S.I. 1952. No. 1664 (L.10)).

groups of prisoners from ordinary imprisonment, and today 7,000 persons discharged from penal or training institutions are under the care of probation officers.

In the field of matrimonial conciliation the 1936 Committee made recommendations to regularize the considerable amount of voluntary work undertaken by probation officers. The recommendations were embodied in the Summary Procedure (Domestic Proceedings) Act⁸ of 1937.

Matrimonial conciliation and enquiry work grew rapidly when the war provided its excess of hasty and unsatisfactory marriages and the calls on the probation officers in this field have remained high—in any given year approximately 75,000 actual or potential breakdowns of marriages are dealt with by probation officers and in many of these cases prolonged casework is required. In recent years, on the recommendation of the Denning Committee⁹ the work of probation officers has been extended to the Divorce Courts, by the experimental appointment of court welfare officers to deal in particular with the welfare of the children of parties seeking divorce. The success and value of the experiment was recognized by the Royal Commission on Marriage and Divorce,¹⁰ which recommended that such officers should be available to all Divorce Courts, a recommendation now being implemented. The officers undertaking this highly skilled work are also finding themselves called on from time to time by the judges to try to effect reconciliation even in marriages which have reached the Divorce Court.

The position of the Probation Service is now so readily recognized in some circles that it is almost automatically relied upon when new duties are required in the courts; in matters of adoption, for instance, the 1936 Committee had suggested that probation officers should be employed only in exceptional circumstances, but officers are increasingly used to act as guardian *ad litem*, particularly in cases where the local authority's own officer is an interested party. In recent months the Committee on Alternatives to Short Sentences of Imprisonment¹¹ was quite clear that probation officers should be used more widely in social enquiries by the courts and that the demand for such enquiries might increase if its own recommendations were adopted that no first offender should be sent to prison unless the courts saw no reasonable alternative. Similarly the Wolfenden Committee¹² suggested greater use of

⁸ Summary Procedure (Domestic Proceedings) Act, 1937. (1. Edw. 8 & 1. Geo. 6. CH. 58).

⁹ Final Report of the Committee on Procedure in Matrimonial Causes. (1947). Cmd. 7024.

¹⁰ Royal Commission on Marriage and Divorce. Report 1951–55 (1956). Cmd. 9678.

¹¹ Alternatives to Short Terms of Imprisonment. Report of the Advisory Council on the Treatment of Offenders. (1957).

¹² Report of the Committee on Homosexual Offences and Prostitution. (1957). Cmd. 247.

the Probation Service for social enquiries in the case of homosexual offenders and of those prostitutes appearing in court for the first or second time, and regarded its suggestion of prison sentences for persistent prostitutes as a measure likely to lead them more readily to accept the help of probation officers. It is significant that these reports assume that probation officers will be available and presuppose their ability to undertake the work involved. The Service can be proud of the confidence in it displayed by such recommendations, but would like to be properly equipped to meet such demands.

As the 1936 Committee recommended, there is now a Probation Advisory and Training Board which supervises the general policy of the Service and organizes the training. Almost three-quarters of the probation officers now serving have been trained, a growing proportion of them at a University, but officers may still be appointed without training. Moreover, there is still no certainty that training is on the right lines. Many students entering the Service discover a wide gap between theory and practice, while the training appears to lack a central direction and apparently fails to give the student a feeling that he is entering a dynamic service which is ready to welcome him.

The recent development of supervised casework is welcomed and accepted by probation officers, but this too demands re-adjustment, further training for some of the older officers and a reconsideration of the relationship between leadership in administration and leadership in casework. The growth of knowledge, the improvement of training and the introduction of supervised casework also brings into question the value of duties now performed by Probation Case Committees and the probation inspectors. The former, composed of magistrates, are required to exercise a general supervision over the work of probation officers, but they can hardly expect to become experts in casework and it is interesting to note that in a recent article¹³ an eminent Clerk to the Justices suggests that, with the growth of supervised casework, Probation Case Committees may need to concern themselves only with broad issues of policy.

Similarly the place of the inspectorate may need reconsidering. Where public funds are involved central inspection is of course necessary, and the inspectors must continue to satisfy themselves that the work is being properly carried out. Their opportunities, or need, to offer advice should, however, become less as the quality of the service and of its local organization improves, and it is not unreasonable to suggest that less frequent inspections could now release some inspectors for more urgent duties in the field of training, in contact with the Universities, and for activities concerned with propaganda and particularly with recruitment.

¹³ Wilson, J.P. "The Work of the Probation Case Committee". *The Magistrate*, XIII, 8. August, 1957. 95-97.

The latter is a most serious matter in which the Service as a whole shares the concern which the Probation Advisory and Training Board must feel about the failure to provide adequate staff to meet current demands, let alone the desire of many Probation Committees to increase their staff to meet the increased demands made upon it. It was recently suggested¹⁴ that the shortage of probation officers was only about 2·3% and therefore not so serious as, e.g. the shortage of policemen or teachers. But in probation every officer missing means that another officer is carrying an excessive case-load, and it may also mean that courts will hesitate to use probation where this is eminently desirable. Furthermore the estimated shortage is based on current establishment but this is in many areas below the desirable number, while the undermanning of the Service is disguised by the appointment of untrained officers or the filling of vacancies by temporary appointments. In some areas officers have preferred to work longer hours with heavier loads rather than to see the standard of their work lowered by such appointments.

The Committee of 1936 stated that "there is obvious danger in the appointment of unqualified persons and the effect of such appointments would be felt for many years". Yet twenty years later the appointment of unqualified persons remains a lamentable necessity, with damaging effects on the work and possibly on the lives of those placed on probation. The Service would like to know why the recruits are not forthcoming.

On matters of policy and organization it is true that the establishment of the Probation Advisory and Training Board makes possible some assessment in the Home Office of developments in the Service and its work. But the Probation Division of the Home Office is not a remote civil service department—it is closely associated with the daily work of the Service it administers. This is a condition much appreciated by probation officers, but one which means that the administrators may not be able to see the total situation or to see this as objectively as might be desirable. The work of the Division itself may not have kept pace with the times and could usefully be reviewed.

So could the payment and conditions of service of probation officers. Provision has been made for dealing with these through the establishment of a Joint Negotiating Committee, but that Committee's interpretation of the term "conditions of service" is an extremely limited one, and it deals with salaries only by comparisons with other services which come within the knowledge of its members. It is heavily weighted with local government representation and is not able to take a completely objective view of the Probation Service and its current value to the country as a whole.

These and many other considerations lead to the belief that the time has

¹⁴ Report of Industrial Court Proceedings (2648), Probation Service. (8.5.57), p. 6.

come for a new departmental committee or royal commission to examine all aspects of the Probation Service. Its current problems, its local difficulties, the problems of recruitment, the training of a modern service, the best use of the inspectorate, the organization of the Probation Division, are matters of concern to every probation officer. There are also many matters in the daily work of the Service to which no one has the time to sit back and give disinterested thought. Should the organization of aftercare or of matrimonial conciliation work involve specialization by certain officers? Can the newly developing prison welfare service be integrated and interchangeable with the Probation Service? Is the organization of approved probation homes and hostels on the best lines? Can the demand for more internal training be met? Is it satisfactory for the organization of the London Probation Service to be under direct Home Office control? Can a Government Department effectively administer a local and personal service? Is a principal probation officer to be a departmental head with somewhat remote control of a local service or to retain his present unique position in local services of knowing and partaking in the daily work of his staff? In a growing service seeking to keep pace with modern demands and modern skills, the list of matters now pressing for answer could be extended indefinitely.

The probation officer stands in court today, and in the public service, with a responsibility for the welfare of other individuals equal to that of the magistrate, the clerk or the doctor, and he feels that his place in that group should be recognized and his work organized to enable him to do justice to it. His purpose is unchanged from that of his predecessor of fifty years ago though his ideas may be sounder and his equipment better. He suffers no sense of complacency about his work and his wish to keep pace with the modern scientific age springs only from a desire to use the advances of today for the better benefit of those in his care.

When the Probation of Offenders Act was passed, sixty miles an hour was considered to be the limit of speedy travel; today an aeroplane can travel at a thousand miles an hour. But its only legitimate purpose is still that of getting from one place to another, and it is useless if the direction is wrong. The Probation Service, seeking to work by better and more scientific means, carries on, with changing methods, but it too would like to be sure about the direction in which it is going. It would welcome a new impartial assessment of its position, its direction, its organization and its work, and it would be happy to abide by the result.

AMERICAN BLUEPRINTS FOR PROBATION, PAROLE AND CORRECTIONAL ADMINISTRATION¹

BY J. E. HALL WILLIAMS (LONDON)

The difficulty which confronts any visitor to the United States in trying to give an account of what he saw and learned in the correctional field is that it is quite impossible to generalize satisfactorily and at the same time out of the question to describe everything seen and learned, while there is always lurking in the background the suspicion that what one saw was not typical or representative, and the haunting fear that one will be guilty of misrepresentation.² Moreover, there is such a wide variety of correctional arrangements and such a complicated system of administration that the visitor is apt to be a little bewildered at the beginning—and bemused at the end of the visit. I hope to avoid some of the dangers of misdescription and misrepresentation and unsatisfactory generalization by confining myself to the realm of ideas, which after all constitute the international commerce of correctional administration. I propose to describe some of the ideas now being mooted with regard to probation, parole, and correctional administration.

THREE LEVELS OF CORRECTIONAL ADMINISTRATION

One of the first things one learns as a visitor is that there are three different levels of correctional administration, taking this term in its widest sense to include the probation and parole services. There is the Federal system, brilliantly administered from Washington by the Federal Bureau of Prisons, which is setting a splendid example to the various state services,³ and the Federal Probation Service, which reaches a high standard. Secondly,

¹ Paper read before the Scientific Group for the Discussion of Delinquency Problems on 21st May, 1957.

² The danger of generalization about the United States is stressed by Dr. Hermann Mannheim in his essay on American Prisons, Chapter 7, 'Group Problems in Crime and Punishment', pp. 165 *et seq.* It was also emphasized by Hon. Mr. Justice Felix Frankfurter, giving evidence before the Royal Commission on Capital Punishment, *Minutes of Evidence*, 26th day.

³ See James V. Bennett, 'The Federal Prison System', Chapter V of the volume entitled 'Contemporary Correction', edited by Paul W. Tappan, 1951, pp. 63 *et seq.*

there are the different state correctional administrations, variously constituted.⁴ Thirdly, in some areas and in regard to some matters, *e.g.*, probation and the administration of the county jails, there is a system of purely local responsibility.⁵

It is hardly surprising in the face of such a wide variety of correctional arrangements that a great deal of thought is now being directed towards formulating an 'ideal type' of correctional administration, and that proposals for reform so frequently take on a rather forbidding 'organizational' aspect. The questions to which answers are now being sought are questions like these: Should there be a State Board of Probation and Parole, responsible within each state for both the appointments to the probation and parole service and for the administration of the service? Or is it better to allow the appointment of probation officers to continue to rest, as it does now in many places, in the hands of the local courts, subject only to a general power of supervision and inspection by state officials? Should the Parole Board be concerned with administration, or should its duties be confined to making decisions concerning the date of parole? Should the orders it makes be subject to review in any manner? Should the length of sentences be determined by the courts or by the Parole Board or by some other administrative agency, such as the Californian Adult Authority? These questions may seem rather baffling to the English visitor: it is almost as true to say of the contemporary American correctional scene, as Maitland said of the early development of English Common Law, that its ideas and policies are secreted in the interstices of procedure.

I propose to describe two main groups of proposals which have recently been published by responsible American bodies as serious contributions to the search for the 'ideal type' of correctional system to which reference has been made. These are the Standard Probation and Parole Act, published in 1955 by the National Probation and Parole Association, and the Tentative Drafts of a Model Penal Code, which have been published by the American Law Institute in the last few years.

I. THE STANDARD PROBATION AND PAROLE ACT

This is the fourth model act to be produced by the Association in the thirty-seven years of its existence. The Foreword informs us that the first, in 1939, concerned state supervision of probation; the second, in 1940, concerned adult probation; and the third, also in 1940, concerned a state administered adult probation and parole system. The latter was most

⁴ See Richard A. McGee, 'State Organization for Correctional Administration', in 'Contemporary Correction', pp. 75 *et seq.*

⁵ *Ibid.*

widely distributed and has been extensively used by legislatures in the drafting of probation and parole laws. Like the previous publication, the present revision is the product of a nationally representative committee working with the staff of the Association. It takes the place of all three model Acts referred to above. It is designed to serve as a plan for a combined probation and parole system, for separate probation and parole Acts, or for separate administration of probation and parole. In other words, this is a flexible blueprint capable of adaptation in the process of adoption in accordance with the needs and desires of particular states. At the same time, the ideal type of probation and parole system is clearly indicated. The Standard Act also adds a model provision concerning the conditional release of offenders, which was not contained in the earlier Acts.

Probation is defined in the Standard Act in such a way as to exclude the practice of some American courts of combining a period of imprisonment with probation to follow.⁶ Such a disposition is described as 'a contradiction in terms and in concept' and is condemned. Wherever feasible treatment of the offender should be in the community rather than in an institution, the Act states. Parole is defined as the release of a prisoner to the community by the parole board prior to the expiration of his term, subject to conditions imposed by the board and to its supervision.⁷

The system of probation and parole which is preferred is a state system controlled by a state board consisting of three members, appointed to serve full-time for a period of six years and retiring in rotation one every two years. These persons should have the highest personal qualifications and education and experience of a very broad character.⁸ The alternative to a state board of three members appointed full-time and directly concerned with administering probation and parole is a state board of five members appointed to serve part-time and without a salary for a period of five years, one member retiring each year, charged with the duty of exercising general supervision over the administration of probation in all courts of the state, and to be known as the State Probation Commission.⁹ At present parole is generally organized on a state-wide basis, coinciding with correctional administration, whereas the probation service is frequently organized on a purely local basis, although there is nowadays usually some degree of state supervision. It is the considered opinion of the N.P.P.A. that the best

⁶ Section 2. Definitions. When used in this Act, unless the context otherwise requires: (a) 'Probation' is a procedure under which a defendant, found guilty of a crime upon a verdict or plea, is released by the court, without imprisonment, subject to conditions imposed by the court and subject to the supervision of the probation service.

⁷ *Loc. cit.*, Section 2 (b).

⁸ Section 3.

⁹ Alternative Section 3.

probation service can only be achieved with the support of a suitable state organization.¹⁰

Under a state *administered* probation and parole system it is envisaged that the state board would appoint a director of probation and parole who shall with the approval of the board appoint his own staff.¹¹ Under the state *supervised* probation system, there shall be a state-appointed director and such other staff as may be necessary for the conduct of the business of the State Probation Commission, but the actual appointment of probation officers to work in the field shall rest with chief probation officers appointed by the judges of the courts to which they are attached.¹² This is substantially the present system in many states.

No detailed description of the duties of probation and parole officers is attempted, for it is realized that 'a statute cannot elaborate the essential duties of probation and parole officers'. A general description of their duties is furnished, together with the comment that 'basically the officers are in a specialized field of social casework and their performance is tested and guided by the professional standards in the correctional casework field'. In their relationships to defendants and prisoners, it is stated that the goal of the service 'is not effective surveillance but constructive relationships'.¹³

The other recommendations of the Standard Act concern review of orders of the State Board (S. 4), protection of contents of pre-sentence reports or pre-parole reports from disclosure (S. 5), the establishment of diagnostic and other residential facilities (S. 6), pre-sentence investigation (S. 11), sentencing procedure (S. 12), conditions of probation (S. 14), parole hearings (S. 18), conditional release (S. 19), and probation and parole violators (S. 17 and S. 25). These are best considered in conjunction with the proposals of the American Law Institute's Model Penal Code on the same matters.

II. THE DRAFT MODEL PENAL CODE

Some years ago the American Law Institute entrusted the preparation of a draft Model Penal Code to a team of distinguished reporters headed by Professor Herbert Wechsler, of Columbia University School of Law.¹⁴ On

¹⁰ *Loc. cit.*, p. 8.

¹¹ Section 7.

¹² Alternative Section 7.

¹³ Section 10 and comment at p. 17.

¹⁴ Professor Wechsler has described the project in a lecture reprinted under the title 'The American Law Institute: Some Observations on its Model Penal Code', Vol. 42, *American Bar Association Journal* (April 1956), pp. 321 *et seq.* See also articles which appeared in *The Journal of Criminal Law, Criminology and Police Science*, Vol. 45, No. 5, January-February, 1955, pp. 520-540, by Dean Albert J. Harno, Professor Herbert Wechsler, Judge Gerald F. Flood, and the Hon. James V. Bennett.

the correctional side most of the work has been done by Professor Paul W. Tappan, of New York University. The reporters are guided by a strong Advisory Committee, representative of many disciplines and fields of professional work, and including many persons eminent in their own field—for example, among prison administrators, Sanford Bates and James Bennett; among university professors, Ernest W. Burgess, Sheldon Glueck, and Thorsten Sellin; among psychiatrists, Drs. Winfred Overholser and Manfred S. Guttmacher; among judges, Learned Hand. The recommendations of the reporters are considered at length by the Advisory Committee who in turn place them before the Council and the Institute at their Annual Meetings, and in this way, gradually and after many years of toil and sweat, the Institute has produced its remarkable series of Restatements of the Law and Model Codes, and is now at an advanced stage of preparation of the Model Penal Code. At the time of writing seven Tentative Drafts of various parts of the Model Penal Code have been printed. It is only proposed to comment in this article on those parts which relate to probation, parole and sentencing procedure. The following points call for discussion:

- (1) Pre-sentence and pre-parole investigations.
- (2) Conditions of probation and parole.
- (3) Revocation procedure.
- (4) Criteria for probation and parole.
- (5) The rejection of the Youth Authority plan and the provisions for young adult offenders.
- (6) The sentencing provisions for adult offenders.

(1) *Pre-sentence and Pre-parole Investigations.* The A.L.I. proposal is that there should be a pre-sentence investigation in all cases where the defendant is convicted of felony, in all cases where he is under twenty-one and is convicted of any crime, and in all cases where a defendant is to be placed on probation or given an extended term of imprisonment.¹⁵ The courts should also have power to order an enquiry in any other case.¹⁶ They should have power to commit a person for sixty days for psychiatric examination and report.¹⁷ It is provided that reports shall not be supplied to the prisoner or his counsel, but the factual contents and conclusions should be communicated to them, and they should be given a fair opportunity to

¹⁵ Tentative Draft No. 2, Section 7.07 (1). It is stated that if the ideal of a pre-sentence investigation in all cases of persons convicted of felony is unattainable, it might be possible to limit the requirement to all cases of first convictions of a felony. Comment at p. 53, and Section 7.07 (1) Alternate (a).

¹⁶ Section 7.07 (2).

¹⁷ Section 7.07 (4).

controvert these. The sources of confidential information need not be disclosed.¹⁸

The N.P.P.A. proposal is that no defendant convicted of a crime, the punishment of which may include imprisonment for more than one year, shall be sentenced or otherwise disposed of before a written report by a probation officer is presented to the court. The court may order a pre-sentence investigation in any other case.¹⁹ Whenever an investigation is required, the probation officer shall promptly enquire into the circumstances of the offence, the attitude of the complainant or victim, and of the victim's immediate family, where possible, in cases of homicide, and the criminal record, social history, and present condition of the defendant.²⁰ Where in the opinion of the court or the investigating authority it is desirable, the investigation shall include a physical and mental examination of the defendant. The commentary states that an investigation prior to sentence is important in every serious case. It should not be restricted to cases where probation or any other particular disposition is anticipated. Only on the basis of a pre-sentence investigation can the judge be sufficiently informed to decide upon the best disposition. A statutory requirement for a pre-sentence investigation in every case would go far beyond the capacity of the probation service in many jurisdictions, so that, although this was regarded as the ideal, a more limited goal has been adopted in the hope that it might be more universally achieved. The commentary adds that there is need in all cases for some type of screening process which would afford a brief review to determine when a full pre-sentence investigation is called for.²¹

There is no great discrepancy between the two sets of proposals concerning pre-sentence investigations. Both drafts recognize that with present resources it would be futile to seek to insist on pre-sentence investigations in every case coming before the courts, and the endeavour is to limit this to certain classes of case where it is thought particularly desirable and where there is a reasonable chance that this might be accepted.

The status of the reports when made is an interesting question. Section 5 of the Standard Act makes the pre-sentence report or pre-parole report and supervision history privileged from disclosure to anyone other than the

¹⁸ Section 7.07 (5).

¹⁹ Section 11.

²⁰ Compare this with the A.L.I. Section 7.07 (3), which says: 'The pre-sentence investigation shall include an analysis of the circumstances attending the commission of the crime, the defendant's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation and personal habits and any other matters that the probation officer deems relevant or the Court directs to be included.'

²¹ *Loc. cit.*, p. 19.

board, the judge, and others entitled to receive such information. This is subject to the large exception that 'the board or court may in its discretion permit the inspection of the report or parts thereof by the defendant or prisoner or his attorney or other person having a proper interest therein, whenever the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful'.²² The A.L.I. regard the reports as only partially privileged, insisting that the defendant or his counsel have the right to know the facts on which any conclusions are based and the conclusions themselves, and have the right to contradict both. The draft does not provide that the report be made available to the defendant and explicitly excludes the disclosure of the source of confidential information.²³

(2) *Conditions of Probation and Parole.* The A.L.I. draft seeks to persuade the courts to impose the minimum number of conditions of probation and parole. The thought which underlies this is that these conditions are the basis upon which revocation may occur at any time, and therefore it is desirable for them to be as precise and reasonable as possible, and to be limited in number. A list of twelve conditions which a court may impose in granting a probation order includes: meeting family responsibilities, undergoing medical or psychiatric treatment, pursuing a course of study or vocational training, employment conditions, conditions against drinking and keeping disreputable company, a condition as to restitution, and 'any other conditions reasonably related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience'.²⁴ Similar conditions are prescribed for parole.²⁵

The N.P.P.A. refrain from listing the desirable conditions in the Standard Act, but make provision for each probation and parole board to adopt

²² There has been much discussion of the proper policy concerning pre-sentence reports and disclosure of their contents. The confidential nature of the investigation has been urged as a ground for resisting disclosure. On the other hand, it is increasingly recognized that the report should be made available in whole or in part to the defendant or his counsel. Sol Rubin, the Legal Consultant of the N.P.P.A., has debated the issue in an article entitled 'What Privacy for Pre-Sentence Reports?', Vol. XVI, *Federal Probation*, December 1952, pp. 8 *et seq.* The position now taken by the N.P.P.A. is that disclosure shall be in the discretion of the court or, in the case of parole reports, the board. See Chute and Bell, 'Crime, Courts, and Probation', 1956, pp. 149-151.

²³ Section 7.07 (5). This may be compared with the English practice which insists that the offender or his representative shall be given a copy of the report made by the probation officer to the court (except in juvenile courts). It is the court's duty to supply the report. See comment in 1957 *Criminal Law Review*, January, pp. 3-4, and Section 43, Criminal Justice Act, 1948. The question of disclosure of the contents of reports made by the Prison Commissioners to the courts has been the subject of a recent Home Office circular, No. 107/57, dated 29th May, 1957. From this it would appear that there is no necessity to read out the contents of such reports in open court, but a copy of the report must be given to the offender or his representative, and it is open to them to dispute its contents. See 1957 *Criminal Law Review*, July, pp. 460-1.

²⁴ Section 301, Tentative Draft No. 2, and Comment at pp. 141 *et seq.*

²⁵ Section 305.17, Tentative Draft No. 5, and Comment at pp. 103 *et seq.*

general rules and regulations concerning such conditions.²⁶ The commentary contains suggestions for inclusion 'if it is thought desirable to inform legislatures and courts as to the purposes of probation'.²⁷ Among these is the surprisingly vague condition that 'the defendant shall avoid injurious or vicious habits'. What is a vicious habit and how precisely one can expect an offender to drop such a habit does not appear. It is understandable that he should be required to 'avoid persons or places of disreputable or harmful character'—even the A.L.I. draft concedes this—but it may not be wise to insist on a condition that gives too much discretion to the probation officer concerning the reporting of a violation.

(3) *Revocation Procedure.* Under the A.L.I. draft, revocation of probation shall be after a hearing at which the prisoner may be legally represented.²⁸ When the court revokes probation it may impose any sentence which might originally have been imposed, but it shall not send the offender to prison unless he has been convicted of some other crime or has been guilty of misconduct which indicates that his continued liberty involves excessive risk that he will commit another crime.²⁹

The N.P.P.A. Standard Act does not contemplate a formal revocation hearing,³⁰ and states that the orders of the probation and parole board shall not be reviewable except as to compliance with the terms of the Act.³¹ Professor Tappan, one of the Association's consultants, registered his dissent from this latter provision. It is surprising to the English reader to find that the hearing may be informal and summary. The comment says it is regarded as 'administrative in nature', and that its form is at the discretion of the court.³² Almost in the same breath we are informed that 'a hearing on a charge of violation of conditions is as much a protection to the court against error as it is a protection to the probationer'. Even if this statement could be accepted, it is difficult to see what protection there is against error in a system which allows the court to decide informally and behind closed doors!

In contrast to the informal and summary method sanctioned by the N.P.P.A. for the treatment of the probationer who violates, the Association

²⁶ Section 14.

²⁷ Page 27.

²⁸ Section 3C1.4.

²⁹ Section 301.3 (2). A third circumstance where prison may be ordered is tentatively suggested, viz. where it is essential to vindicate the authority of the Court or the probation officer and is not unjust to the defendant.

³⁰ Section 17.

³¹ Section 4.

³² Page 31. In fairness it should be noted that the 1955 draft goes further than the 1940 Act: it does confer a right to a hearing without unnecessary delay. See Sol Rubin, 'The Standard Probation and Parole Act: Fifteen Years Later', *Federal Probation*, Vol. XIX, December 1955, p. 9.

is of the opinion that the parole violator should be afforded a hearing before the board,³³ and that written representations should be allowed on his behalf.³⁴ On this matter the A.L.I. provides for access to (but not representation by) counsel, and a proper hearing with written notice to the defendant of the alleged ground of violation.³⁵

(4) *Criteria for Probation and Parole.* The A.L.I. draft goes to some length to develop specific criteria for probation³⁶ and parole,³⁷ as it does for sentences and other means of disposition of offenders.³⁸ These are intended for the guidance of courts and legislators, and represent by no means the least significant contribution made by the tentative drafts so far published. The N.P.P.A. commentary contains a brief paragraph stating that the court's discretion to order probation should not be limited by statutory exceptions, and that the offence committed is only one of the factors to be considered, and that no particular offence should constitute an automatic bar to probation. 'In general', we are told, 'the determination as to the granting or denial of probation should be based on the likelihood of the defendant's remaining law-abiding under probation supervision, and on the comparative prospects for rehabilitating him in the community with the facilities available in it, or in the institution'.³⁹

(5) *Special Provisions for the Trial and Sentence of Young Offenders.* In the field of corrections, the American Law Institute has already made an important contribution by its advocacy in 1940 of the Youth Authority idea, which was eventually adopted with modifications by several states.⁴⁰ The Model Youth Correction Authority Act was the result of the deliberations of a special committee set up in 1938. The plan was to remove the sentencing power from the courts in the case of young offenders between 16 and 21 years of age, and entrust it to a Youth Correction Authority, which was to consist of a board set up to receive all offenders found guilty of crime by the courts who were to be committed to their care on an indeterminate sentence. The board would be charged with dealing with all such offenders with a view to their rehabilitation rather than punishment. It would determine how long an offender should be detained and under what conditions, and it would

³³ Section 18.

³⁴ Section 22. There is no obligation to hear oral arguments, however, but the board is empowered to permit an oral argument to it.

³⁵ Section 305.21.

³⁶ Section 7.01, Tentative Draft No. 2.

³⁷ Section 305.13, Tentative Draft No. 5.

³⁸ Section 7.02 (Fines), 7.03 (Extended Term of Imprisonment for Felony), 7.04 (ditto for Misdemeanours and Petty Misdemeanours).

³⁹ *Loc. cit.*, p. 21.

⁴⁰ See Chapter IX, 'Contemporary Correction', pp. 124 *et seq.* for an account of the Youth Authority plan.

provide, and be responsible for administering, all the institutions for such offenders. This was to be a Treatment Tribunal of the ideal type, and as such the proposal attracted a great deal of interest. The idea that the same body which chose the sentence was to be responsible for its execution and for the rehabilitation of the offender in the community appeared to many persons an extremely attractive one. The only exceptions were to be cases where the death penalty or life imprisonment were provided by law, and very petty transgressions. Although the proposals received a great deal of publicity at the time, their practical influence has been disappointingly limited—only five states adopted anything like the Youth Correction Authority plan, with two others going some part of the way towards adoption. The principal experiments have been in California and Minnesota, where the device has been used mainly for juvenile offenders, although it was originally intended for the young adult in the age group 16-21.⁴¹

In connection with the drafting of the Model Penal Code, the American Law Institute has been reviewing the position in the light of this experience, and at first the conclusion was reached that the Institute could no longer support the Youth Authority idea. The position taken was that it was unwise to divest the courts of their sentencing function, and also that it was unwise to entrust administrative responsibility to the same board which was charged with the duty of paroling offenders. The Commentary on Articles 6.06 and 6.07 in Tentative Draft No. 2 stated that it was now thought that 'it is desirable that the court play a substantial rôle in sentencing, with authority not only to determine whether the offender should be sentenced to imprisonment, but also to exercise some influence upon its length. Proposals to shift such authority to a treatment board or to vest it wholly in correctional administration, such as an Adult Authority, were considered at length by the Reporters and Advisory Committees but were not accepted. A sound distribution of authority between the court and the administrative organs of correction, rather than a wholesale shift of power, is the end to be achieved'. In June 1955 the Council of the Institute agreed that they would no longer support the Youth Authority plan.⁴²

Since that time there has developed a strong opposition to the Institute's new proposals, as a result of which certain modifications have been made in the direction of a compromise.⁴³ What was originally proposed was more in the nature of a procedural change (involving the setting up of special courts for young adult offenders) rather than any change in the methods of disposition of offenders. It was proposed, however, that the court should have

⁴¹ *Ibid.*, p. 126.

⁴² Tentative Draft No. 3, 25th April, 1955, was approved.

⁴³ Tentative Draft No. 7, 3rd May, 1957, recounts the most recent developments.

power to impose a modified sentence in the case of young adult offenders between 17 and 21 upon first conviction of felony. There would be a special part of the criminal courts exclusively devoted to such young adult offenders, and each state would appoint a Director of Young Adult Corrections, under whose administration special institutional facilities would be developed. Parole decisions would be by an independent board of three members separate from that dealing with adult offenders generally.

The latest development in the A.L.I.'s thinking is contained in Tentative Draft 7 of the Model Penal Code, which was placed before the Council and the Institute itself in May 1957. It represents the results of the process of reconsideration which has been going on, and goes some way towards imitating the Federal Youth Corrections Act in its recommendations.⁴⁴ What is now proposed is an alternative mode of disposing of the young adult offender, now defined as a person who, at the time of sentencing, is 16 but less than 22 years of age.⁴⁵ In lieu of any other sentence of imprisonment, the court may sentence a young adult offender convicted of felony to a special term of imprisonment without a minimum and with a maximum of four years,⁴⁶ if the court is of the opinion that such special term is adequate for his correction and rehabilitation and will not jeopardize the protection of the public.⁴⁷ Provision is made for the Court to order that the conviction shall not count as part of the offender's criminal record for the purpose of any disqualification or disability.⁴⁸ Committal for observation and study at an appropriate reception or classification centre for a period of ninety days will be possible if the court, after pre-sentence investigation, desires additional information concerning a young adult offender.⁴⁹

These changes have not succeeded in satisfying all those who have expressed disappointment with the A.L.I.'s proposals, in particular the N.P.P.A., and it is impossible to foretell the outcome of the controversy. Nor is it possible for an outsider to judge which side has the best of the argument, but it may be worth while to observe that those who have drawn up the A.L.I. proposals are convinced that it is wiser to seek a highest common factor and give support to the best modern correctional practices, rather than to propound idealistic schemes which bear little or no relation to what it is possible to achieve in the foreseeable future.

⁴⁴ For an account of this Federal Law, see George J. Reed, 'The Federal Youth Corrections Act in Operation', Vol. XVIII *Federal Probation*, September 1954, pp. 10 *et seq.*

⁴⁵ The Federal Act envisages up to six years' supervision, of which not more than four may be spent in an institution.

⁴⁶ Section 6.05 (1), Tentative Draft No. 7.

⁴⁷ Section 6.05 (2).

⁴⁸ Section 6.05 (3).

⁴⁹ Section 6.05 (4).

(6) *The Sentencing Provisions for Adult Offenders.* The A.L.I. sentencing provisions involve the retention of sentencing in the control of the courts, but only in the form of setting a minimum and maximum term, leaving the parole board to determine the precise date of release. It is not possible within the space of this article to describe the proposals in any detail, and again it must be noted that the recommendations have come under fire and are only tentative at this stage. What is proposed is that the courts should in every case of felony fix the minimum and maximum term within certain prescribed limits according to the grade of felony.⁵⁰ There should be two types of term, called an ordinary term and an extended term respectively.⁵¹ The latter would apply to recidivists and various kinds of dangerous offender, the categories being carefully defined.⁵² As the term indicates, extended terms would be for longer periods than ordinary terms. Misdemeanours would not be subject to the indeterminate sentence save where an extended term was imposed.⁵³ The main idea behind these provisions is to reduce the terms of imprisonment ordered by American courts, which are often excessive. The proposals are linked with the notion that all offenders shall be released on parole prior to the termination of the sentence,⁵⁴ though there has been some debate concerning the criterion for determining the length of time to be served on parole.⁵⁵ An important provision is that all sentences are to be deemed tentative for one year, and on petition of the Commissioner of Correction the court is to have power to re-sentence the offender, in which case it may impose any sentence which it might have imposed originally.⁵⁶ We may note here that the N.P.P.A.'s sentencing proposals envisage that a sentence may be modified by the court within sixty days after it has been imposed. Is there here the germ of an idea which might be seriously considered for adoption in our jurisdiction? Would it be possible to provide that, on the petition of the Home Secretary, the Court of Criminal Appeal may review the sentence of an offender, and substitute any sentence which the trial court might have imposed or ordered, provided that the petition is brought within twelve months of the sentence—or within sixty days?

By contrast with the A.L.I. proposals, the N.P.P.A. Standard Act is much more revolutionary and perhaps for that reason less likely to command support. It is provided that 'in committing a defendant to an institution the court shall not fix a maximum term of imprisonment, but that the

⁵⁰ Section 6.06, Tentative Draft No. 2.

⁵¹ Section 6.07.

⁵² Section 7.03

⁵³ Sections 6.08 and 6.09 together with 7.04.

⁵⁴ Section 6.09A (1).

⁵⁵ Section 6.09A (2)

⁵⁶ Section 7.08.

maximum term provided by law for the offence for which the prisoner was convicted and sentenced shall apply in each case. The court may in its discretion fix a minimum term of imprisonment which shall in no case exceed one-third of the maximum provided by law for the offence for which the defendant was convicted, or seven years, whichever is less. The court may modify a judgment within sixty days after it has been imposed. The court may reduce a minimum term of imprisonment at any time before the expiration thereof upon the recommendation of the (parole) board . . .'.⁵⁷ These proposals represent a recession from the position adopted in the 1940 draft, where the statutory maximum was prescribed for all cases, with no minimum sentences, and complete discretion to the parole board to parole at any time. The committee divided evenly upon the retention of this provision, so the question was referred to the Legislative Committee of the Board of Trustees of the N.P.P.A., which came to the conclusion that the Standard Act should incorporate some sentencing method which would give both the court and the parole board appropriate rôles in the treatment process. The Comment on this matter contained in the text of the Act records that 'the form of sentence is the only major area in which essential unanimity did not come out of committee deliberations'. It concludes with the phlegmatic remark that 'no doubt the subject is one for continued study'.⁵⁸

CONCLUSION

The above remark about the need for continued study of the subject might well be applied to almost every aspect of probation, parole and correctional administration which I have touched upon. The main outlines of the A.L.I. and N.P.P.A. blueprints have been sketched, and it has been shown that they cover a wide range of topics, many of them exceedingly controversial. Our American cousins are to be admired for the way they grasp the nettle and submit it to close examination. Not everything they find or suggest is relevant to our own experience and conditions, but in my submission we could take a few lessons from them in the art of self-examination or nettle-grasping, and there may well be an idea here and there worth borrowing.

⁵⁷ Section 12.

⁵⁸ Page 22.

A SMALL COMPARATIVE STUDY OF THE RESULTS OF PROBATION

BY LESLIE T. WILKINS (LONDON)

(1) It is known that some courts place on probation a much greater proportion of the offenders who come before them than do others. It is possible that the former courts may have a greater proportion of cases for which probation would be regarded by any court as the most suitable treatment but it is certain that the variations that exist in sentencing and treatment policy cannot be wholly explained by differences in the types of offenders dealt with. Courts are actuated in the main by two (not always compatible) principal considerations, the protection of society and the rehabilitation of the offender, and it is fortunate, from the point of view of research, that genuine differences of opinion exist. Some courts regard probation as a particularly effective form of treatment in general and hence consider it suitable for a greater variety of offenders than do others. These differences between courts can be used to provide evidence of the different values of different treatments or treatment policies. Unless it comes to be regarded as ethical to carry out experimental variations in penal treatment there will always be some doubt regarding the validity of such evidence, but the margin of doubt can be reduced by research techniques. This article is concerned with the application of some of these techniques to a study of the use of probation for male persons by courts of quarter sessions.

(2) The higher courts throughout the country place on probation some 15–20% of the males they convict. The variation between courts is large. It came to the notice of the Home Office research unit that one court of quarter sessions used probation in about half the cases which it tried and it was thought that it would be interesting to study the effects of this policy. The year 1952 was selected as being not so remote that the circumstances would be unrelated to those of today, yet sufficiently long ago to allow of an adequate follow-up period in nearly all cases.

(3) This court will be called Court P. It was possible to construct a sample of cases from similar areas where quarter sessions had used probation with more nearly the national average frequency. We shall refer to this sample as Sample Q. It seemed that Sample Q could provide data from which some assessment of the treatment policy of Court P could be obtained and which at the same time might throw light on the value of probation.

(4) The disposals of male offenders found guilty in the two samples during 1952 are shown in Table I below.

TABLE I

Disposals of male persons found guilty at Court P and in the control sample

<i>Disposal</i>	<i>Court P Percentage</i>	<i>Sample Q Percentage</i>	<i>Differences Percentage</i>
Probation order. . . .	52	18	+35
Discharges	—	9	— 9
Fines	7	11	— 4
Prison and Borstal ¹ . . .	41	62	—21
Total	100	100	100

(5) The question for investigation is whether these strikingly different forms of disposal achieve different degrees of success. The only available measure of success is the proportion of offenders who are convicted of further offences within a time limit. It has been shown that for Borstal boys the time limit is not critical (provided, of course, that it is the same for all cases) and that three years is more than adequate to provide a valid comparison. It has also been shown that for Borstal boys various criteria of success or failure of training are correlated and as a result the simple dichotomy, reconvicted/not reconvicted within three years, gives the same results as some of the more elaborate criteria of success or failure.² By selecting 1952 as the sample year for the comparison, nearly all cases disposed of in that year would have been at risk to further crime for three or more years.

(6) The search for information relating to subsequent reconviction is an expensive procedure and accordingly we must use a research design of high efficiency in terms of this information. Court P dealt with 107 cases and in 97 of these the necessary information was available. The major part of the information we require is derived from the 97 cases at Court P, and accordingly economy of criteria information would be secured by taking equal samples from Court P and from other areas. But the area serving as the control was very large and was found to include districts which had markedly different characteristics from the area served by Court P and these characteristics may be regarded as of some importance in the field of inquiry. Fortunately it proved possible to divide geographically the control area into

¹ Sample Q included one case in which an approved school order was made.

² MANNHEIM, H., and WILKINS, L. T. 'Prediction Methods in Relation to Borstal Training'. 1955. (H.M.S.O. London).

two parts, and these will be called Q1 and Q2. The special features were within the area Q1, and Q2 did not differ in any very obvious way from the area served by Court P. Accordingly it was decided to take equal samples from Q1 and Q2. Samples were drawn strictly at random from the two parts, Q1 and Q2, and all cases in the three samples were checked for subsequent reconvictions by the Criminal Record Office at New Scotland Yard. In the next section of this report we shall use the Q2 sample for a different form of analysis, but at this point it is sufficient to note that, when analysed by types of disposal, no significant differences were noted in the proportions of successes in Q1 and Q2. The results of the follow-up for Court P cases and of those from Q1 and Q2 combined are given in Table II below.

TABLE II

Disposals of male persons found guilty at Court P and in the control areas in 1952 with subsequent reconvictions

<i>Disposal at Court P</i>	<i>Court P</i>		<i>Sample Q areas (Q1 & Q2)</i>		<i>Percentage success</i>	
	<i>Success</i>	<i>Failure</i>	<i>Success</i>	<i>Failure</i>	<i>Court P</i>	<i>Sample Q</i>
Probation . . .	No: 30	No: 20	No: 25	No: 9	60	73
Discharges . . .	—	—	12	7	—	63
Fined . . .	7	—	19	2	100	90
Prison and Borstal	20	20	57	63	50	48
Total . . .	57	40	113	81	59	58

(7) The similarity between the two samples in the total success rate is surprising, and no significant difference is found in the ratio of the success rate for the institutional and non-institutional disposals, although in the control areas 21% more were sent to penal institutions. This comparison leads to the suggestion that different treatments have the same effect upon the reconviction rates, but it may be argued that this result might derive from compensating differences. For example, the treatments may have different effects on different classes of offenders and operate in different ways so that these differences are masked. The assumption that the cases tried in the control areas are comparable as a group with the cases dealt with at Court P is not, as has been noted, very soundly based. Accordingly a more sophisticated design was adopted, using only the Court P and cases from area Q2, with the

aim of eliminating or minimizing any differences between the areas and also the individual cases dealt with.

(8) The following items of information were readily available from the Home Office statistical cards and were considered to be relevant to the disposal of individual cases by the courts.

1. Type of the principal offence of which the offender was found guilty at the proceedings concerned.
2. Age of offender.
3. Number of additional convictions at the same time.
4. Number of offences taken into consideration.
5. Number of previous convictions for indictable offences.

(9) From the very much larger number of cases dealt with in the control area (Q2) it was possible to match each of the 97 cases dealt with at Court P on these points. This matching was done before the subsequent criminal record was traced and without reference to the treatment given in the control areas. The matching was very close, except that one offender dealt with at Court P had 25 previous proved offences and it was impossible to find a matching case with more than 5. In cases where an offender of exactly the same age, in the same offence category and with the same criminal record as the Court P case could not be found in Q2, the two nearest were identified and the selection was biased towards the one with the slightly worse crime record. Each case tried at Court P was thus matched with a control case from the Q2 sample. The cases dealt with at Court P had a total of convictions greater than the matched cases as follows:—

	<i>Court P</i>	<i>Sample Q2</i>
Additional convictions at same time	19	17
Additional offences taken into consideration	18	17
Previous proved offences	72	43

(If the Court P case with 25 previous proved offences and the control case with 5 are omitted, the totals in the last line become 47 and 38). If two control cases tied for selection on all points the case nearest in exact age or nearest in time of trial to the Court P case was chosen.

(10) Comparison will be made of the cases from Court P and the matched Q2 sample. We may classify the two groups of cases according to the method of disposal by Court P (ignoring the method of disposal of the control case) and examine the success rate. These data are given in table III.

TABLE III

Disposal of male persons found guilty at Court P in 1952 and matched Q2 cases, with subsequent reconvictions

<i>Disposal by Court P</i>	<i>Court P</i>		<i>Matched Q2 cases</i>	
	<i>Success</i>	<i>Failure</i>	<i>Success</i>	<i>Failure</i>
Probation order	30	20	28	22
Prison and Borstal	20	20	20	20
Fine	7	—	5	2
Total	57	40	53	44

(11) No significant differences appear between any type of treatment or in the total success ratio. Since no control was imposed in the method of disposal of the matched Q2 cases, it would have been possible that all the cases put on probation by Court P, when matched on the control points, also matched on the treatment factor. This was not found to occur. The disposal of the Q2 cases is given in Table IV analysed by the disposal of the case each matched at Court P.

TABLE IV

Disposal of male persons found guilty at Court P in 1952 and disposal of matched Q2 cases in the same year

<i>Disposal at Court P</i>	<i>Disposals of Q2 Control</i>				<i>Total</i>
	<i>Prison and Borstal</i>	<i>Fine</i>	<i>Discharge</i>	<i>Probation</i>	
Probation	24	6	1	19	50
Prison and Borstal	33	1	2	4	40
Fine	3	1	2	1	7
Total	60	8	5	24	97

(12) It may be of interest to comment at this stage on the differences within the Q1 and Q2 areas. Of cases in the sample from Q1 (where there were special characteristics which it was thought might bias the results, see paragraph 6) only 11% were put on probation, whilst of cases coming from Q2, 24% were put on probation. The sample obtained by matching individual cases from Q2 gives almost the same result, indeed the matched sample

differs from the random sample from Q2 by no more than 2% in any category.³

(13) The reproduction of the case material upon which this study is based is not necessary or possible. But in view of the negative nature of the results a summary detailed analysis might help in the formation of new hypotheses for subsequent testing. Accordingly, in the Appendix, each of the 50 cases put on probation by Court P is shown together with the follow-up information, and similar information together with the treatment ordered is given for the Q2 matched cases. From these data it will be seen that not only is the frequency of reconviction almost exactly the same for the cases and the controls but the form of the first subsequent disposal (which presumably reflects the seriousness of the subsequent offence) is almost identical. Table V gives these data in summary.

TABLE V

Male persons placed on probation by Court P and their Q2 controls
Subsequent reconvictions and disposals

<i>Result</i>	<i>Probation cases (Court P)</i>	<i>Q2 Control cases (various treatments)</i>
Not reconvicted	30	28
Reconvicted	20	22
Sentence on reconviction		
Prison 10	} 20	Prison 11
Fine 6		Fine 6
Borstal 2		Borstal 2
Probation 1		Probation 1
Detention 1		Detention 1
		Borstal recall 1

If we remove from this sample these 19 matched pairs of offenders put on probation both by Court P and in sample Q2 (see Table 4), the results remain materially the same.

(14) It was noted that Court P frequently required cases put on probation to provide sureties. Doubtless there were differences between cases where sureties were not required and cases where they were, but none of these differences was related to items included amongst the factors used for matching. The criminal records of the probationers who provided surety were not significantly different from those of the probationers who did not. In the

³ This has interesting methodological implications. It may be possible to avoid the use of the more elaborate matching techniques for broad comparisons of treatments.

sample of 50 probation cases, 25 were required to provide sureties: of these 25, 11 were reconvicted and 14 were not. The percentage of all 50 probationers (with and without sureties) who were not reconvicted was 60, and it is clear that the rate for cases where sureties were required (56%) does not represent a significant difference between the two groups. This result is in accord with the general findings of this study—similar cases show similar success rates irrespective of variations in the treatment.

Discussion and Summary

(15) An examination of 97 male offenders convicted by a court of quarter sessions (Court P where the use of probation was treble the national average) and of matched cases from elsewhere, reveals no significant differences in the outcome of treatments in terms of further convictions.

(16) This analysis does not enable us to reject the hypotheses that

- (a) the disposal policy of Court P, although differing significantly from that in the control areas, shows no different results in terms of reconviction.
- (b) the use of probation as a treatment for a large proportion of cases which many courts would have sent to prison does not result in a greater proportion of reconvictions.

(17) There are limitations to these results. If, for example, the probationers were more or less easy of detection in subsequent criminal acts than were the other offenders, the results would be biased accordingly. The probationers were not removed from the risk of further crime whereas those sentenced to imprisonment or Borstal training were not exposed to risk for a period after sentence. So far as this difference has any effect, it creates a bias to the advantage of the control cases; it is, however, believed that, since the period of exposure to risk after discharge from prison and other institutions was fairly long, the bias is not large. A further limitation is that, since beyond a certain degree of seriousness of crime all courts would almost certainly have passed the same type of sentence (e.g. imprisonment or preventive detention), the study provides no evidence on what might have been the result if these cases had been placed on probation.

(18) It seems that a larger proportion of offenders who are now sent to prison or Borstal could be put on probation without any change in the reconviction rate as a whole, although with the selection of worse risks for probation the gross success rate for probation as a form of treatment might drop.

(19) The negative result of this study is challenging. Why did undoubtedly different treatment policies make little or no difference in subsequent criminal activity?

Probation Cases at Court P.

Case Number	OFFENDERS ALL PLACED ON PROBATION								TO JUNE
	Age	Classification of offence †	Additional convictions at same time	Additional offences taken into consideration	Previous proved offences	Failure Date reconvicted	Period between being placed on probation and reconviction	Penalty for offence for which reconvicted	Success Period without reconviction
1	27	49	1	—	—	Nil	—	—	5 yrs.
2	31	49	—	—	—	Nil	—	—	4 yrs. 11 mths.
3	22	33	1	—	8	21/1/56	3 yrs. 7 mths.	Impt. 6 mths.	—
4	53	33	1	—	25	20/7/53	1 yr. 1 mth.	Impt. 1 yr.	—
5	25	33	1	—	3	21/3/57	9 mths.	Fine £10	—
6	21	30	2	3	4	23/2/53	10 mths.	Impt. 1yr.3mths.	—
7	27	30	2	3	—	11/9/53	1 mth.	Fine 2s.	—
8	20	30	1	—	3	Nil	—	—	5 yrs.
9	19	29	—	2	1	9/6/52	2 mths.	Borstal	—
10	20	49	—	—	—	Nil	—	—	5 yrs.
11	22	30	—	—	1	14/6/54	1 yr. 6 mths.	Impt. 2 yrs.	—
12	33	30	—	—	—	11/2/53	10 mths.	Det. 1 day	—
13	18	30	—	—	—	Nil	—	—	4 yrs. 11 mths.
14	21	28	1	—	1	21/6/54	2 yrs. 4 mths.	Impt. 6 wks.	—
15	17	49	—	—	2	Nil	—	—	5 yrs. 4 mths.
16	17	32	—	—	1	15/4/52	4 mths.	Borstal	—
17	18	32	—	—	1	Nil	—	—	4 yrs. 7 mths.
18	16	30	1	2	5	Nil	—	—	5 yrs. 4 mths.
19	17	30	—	—	1	9/6/54	2 yrs. 2 mths.	Fine £5	—
20	19	30	—	—	1	Nil	—	—	5 yrs. 2 mths.
21	15	30	—	—	—	Nil	—	—	5 yrs. 2 mths.
22	18	29	—	—	2	Nil	—	—	5 yrs. 4 mths.
23	17	29	1	—	—	Nil	—	—	4 yrs. 9 mths.
24	17	29	—	—	3	27/6/56	3 yrs. 7 mths.	Impt. 1 yr.	—
25	15	29	—	4	1	7/12/54	2 yrs. 8 mths.	Fine £5	—
26	20	33	1	—	—	5/1/53	11 mths.	Probation	—
27	18	33	1	—	—	29/12/52	10 mths.	Fine £10	—
28	18	33	1	—	—	Nil	—	—	5 yrs. 4 mths.
29	32	32	—	—	—	31/7/53	8 mths.	Impt. 1-mth.	—
30	23	32	—	—	—	Nil	—	—	4 yrs. 7 mths.
31	17	32	—	—	—	Nil	—	—	4 yrs. 7 mths.
32	17	30	—	—	—	Nil	—	—	5 yrs. 4 mths.
33	21	30	1	—	2	Nil	—	—	5 yrs. 5 mths.
34	22	30	1	—	—	19/2/53	1 yr. 1 mth.	Impt. 1yr.6mths.	—
35	17	30	—	—	—	Nil	—	—	5 yrs. 4 mths.
36	17	30	—	—	1	Nil	—	—	5 yrs. 2 mths.
37	23	30	—	—	—	Nil	—	—	5 yrs. 4 mths.
38	17	30	1	—	—	2/4/55	2 yrs. 10 mths.	Fine £5	—
39	17	30	—	—	—	Nil	—	—	4 yrs. 11 mths.
40	17	30	—	—	—	Nil	—	—	4 yrs. 11 mths.
41	17	30	1	—	—	Nil	—	—	5 yrs.
42	18	30	1	—	—	Nil	—	—	5 yrs.
43	23	29	—	—	3	12/6/52	2 mths.	Impt. 1yr.9mths.	—
44	17	29	—	4	1	Nil	—	—	5 yrs. 2 mths.
45	37	54	—	—	—	Nil	—	—	4 yrs. 2 mths.
46	31	54	—	—	—	Nil	—	—	5 yrs. 2 mths.
47	22	54	—	—	—	Nil	—	—	5 yrs. 2 mths.
48	23	48	—	—	2	2/2/55	3 yrs. 5 mths.	Impt. 9 mths.	—
49	20	29	—	—	—	Nil	—	—	5 yrs. 1 mth.
50	19	30	—	—	—	Nil	—	—	4 yrs. 11 mths.

Not Reconvicted, 30. Reconvicted, 20 (10 to prison, 6 fined, 2 to Borstal, 1 Probation extended, 1 detention).

† This classification is the same as that used in Criminal Statistics.

Matched Cases

TO JUNE 1957

Classification of offence †	Additional convictions at same time	Additional offences taken into consideration	Previous proved offences	Penalty	Failure	Period between release from custody and reconviction	Penalty for offence for which reconvicted	Success
					Date reconvicted			Period without being reconvicted
49	—	—	—	Impt. 1 yr.	12/6/52	Nil	Impt. 1 yr. 9 mths.	—
49	—	—	—	Impt. 2 yrs.	28/9/55	2 yrs. 3 mths.	Fine £10	—
33	—	—	4	Fine	Nil	—	—	5 yrs.
33	—	—	5	Impt. 1 yr.	20/4/53	Nil	Impt. 3 mths.	—
33	1	—	1	Impt. 2 yrs.	Nil	—	—	3 yrs. 6 mths.
30	1	3	4	Impt. 2 yrs.	Nil	—	—	3 yrs. 6 mths.
30	1	2	—	Impt. 1 yr. 6 mths.	Nil	—	—	3 yrs. 7 mths.
30	—	—	3	Impt. 1 yr. 6 mths.	17/5/55	1 yr. 7 mths.	Impt. 1 yr. 6 mths.	—
29	—	—	1	Impt. 1 yr. 6 mths.	Nil	—	—	3 yrs. 11 mths.
49	—	—	—	Impt. 6 mths.	Nil	—	—	4 yrs. 5 mths.
30	—	—	1	Impt. 9 mths.	Nil	—	—	4 yrs. 8 mths.
30	—	—	—	Impt. 6 mths.	Nil	—	—	5 yrs. 1 mth.
30	—	—	—	Impt. 2 wks.	Nil	—	—	5 yrs. 4 mths.
28	—	—	1	Impt. 9 mths.	20/11/53	1 yr. 1 mth.	Impt. 1 yr. 4 mths.	—
49	—	—	1	Borstal	10/8/54	10 mths.	Fine £3	—
32	—	5	1	Borstal	Nil	—	—	3 yrs. 10 mths.
32	2	—	1	Borstal	13/9/54	1 yr. 2 mths.	Fine £2	—
30	1	2	5	Borstal	1/6/54	8 mths.	Impt. 2 wks.	—
30	—	—	1	Borstal	Nil	—	—	3 yrs. 4 mths.
30	—	—	1	Borstal	Nil	—	—	3 yrs. 3 mths.
30	—	3	—	A.S.	Nil	—	—	3 yrs. 9 mths.
29	—	—	2	Borstal	21/9/54	10 mths.	Impt. 2 wks.	—
29	1	—	—	Borstal	15/3/55	1 yr. 4 mths.	Impt. 2 wks.	—
29	—	—	3	Borstal	21/5/54	6 mths.	Recall	—
29	—	—	2	Borstal	10/12/54	1 yr.	Det. 6 mths.	—
33	1	—	—	Probation	24/9/52	2 mths.	Impt. 1 yr.	—
33	—	—	—	Probation	Nil	—	—	4 yrs. 11 mths.
33	1	—	—	Probation	14/2/57	4 yrs. 2 mths.	Fine £10	—
32	2	—	—	Probation	Nil	—	—	5 yrs. 2 mths.
32	—	—	—	Probation	7/8/53	1 yr. 1 mth.	Impt. 1 wk.	—
32	1	—	—	Probation	Nil	—	—	5 yrs.
30	—	—	—	Probation	Nil	—	—	5 yrs. 2 mths.
30	—	—	2	Probation	17/3/53	10 mths.	Fine £5	—
30	1	—	—	Probation	Nil	—	—	5 yrs. 4 mths.
30	—	—	—	Probation	Nil	—	—	5 yrs. 3 mths.
30	—	—	1	Probation	6/5/53	1 yr. 1 mth.	Borstal	—
30	—	—	—	Probation	Nil	—	—	5 yrs. 5 mths.
30	1	—	—	Probation	15/6/52	1 mth.	Borstal	—
30	—	—	—	Probation	Nil	—	—	4 yrs. 10 mths.
30	—	—	—	Probation	27/11/52	7 mths.	Prob. 3 yrs.	—
30	1	—	—	Probation	Nil	—	—	5 yrs. 2 mths.
30	1	—	—	Probation	Nil	—	—	5 yrs. 4 mths.
29	—	—	3	Probation	16/4/56	5 yrs. 1 mth.	Fine £10	—
29	1	2	2	Probation	21/6/54	2 yrs. 4 mths.	Impt. 1 mth.	—
54	—	—	—	Fine	Nil	—	—	5 yrs. 4 mths.
54	—	—	—	Fine	Nil	—	—	4 yrs. 11 mths.
54	—	—	—	Fine	Nil	—	—	4 yrs. 11 mths.
48	—	—	—	Fine	Nil	—	—	5 yrs. 5 mths.
29	—	—	—	Fine	20/10/52	1 mth.	Impt. 2 mths.	—
30	—	—	—	Cond. Disch.	Nil	—	—	4 yrs. 10 mths.

reconvicted, 28. Reconvicted, 22 (11 to prison, 6 fined, 2 to Borstal, 1 Borstal recall, 1 probation extended, 1 detention).
 † This classification is the same as that used in Criminal Statistics.

THE ENGLISH PROBATION TRAINING SYSTEM¹

By F. J. MACRAE (LONDON)

Probation officers not only deal with offenders of all ages placed on probation but also with a wide range of other men, women and young people whose affairs have brought them to the courts, though by no means always as offenders. Thus they undertake the after care of many boys and girls from approved schools and of offenders released from Borstals and prisons (including corrective training and preventive detention establishments), they supervise young people found by the courts to be in need of care or beyond control, they try to effect matrimonial conciliation, they act as guardian *ad litem* in adoption proceedings and they make social enquiries for the information of the courts, including the Divorce court where custody of and access to children is in issue.

A probation officer's training must be geared to the variety of work he is likely sooner or later to be called upon to perform. This was in the mind of the Departmental Committee on the Social Services in Courts of Summary Jurisdiction when, in 1936, they made the recommendations upon which present day probation training is based. In addition to certain obvious requirements such as knowledge of the relevant law and court procedure and of central and local social services, the Committee recommended that, because 'the probation officer was called upon to deal with persons of unstable character or of border-line mentality, he should be equipped with knowledge to enable him to deal with such persons in the way best suited to their needs. He should be acquainted with the work carried out in child guidance clinics and in the out-patient clinics of mental and other hospitals and with the theories underlying this type of work. Without being a trained psychologist, the probation officer should have sufficient knowledge of psychological methods to enable him to detect cases which would benefit by expert diagnosis and to follow up any line of treatment recommended by the specialist; such knowledge might also assist him to exercise in the most effective way his own personal influence.'

The Committee also commended the Home Office experiment in training probation officers begun on modest lines in 1930, and recommended that the

¹ Paper read as part of a Symposium on 'The Casework Approach to Probation' at a meeting of the Scientific Group for the Discussion of Delinquency Problems, London, 22nd November, 1956.

scheme should be developed with the assistance of an advisory Board representative of probation committees and universities with social science departments: this Board would undertake the selection as well as the training of probation officers. The Probation Training Board was at once appointed and a steady development of selection and training began, though necessarily on restricted lines during the war years.

In 1946 the Home Office, on the advice of the Training Board, invited The National Institute of Industrial Psychology to make a job analysis of the work of probation officers and to suggest improved methods for selecting men and women who would be suitable for the work after training. The Institute studied probation officers' duties, both directly and indirectly from Home Office records, and drew up a list of desirable and undesirable qualities: they paid special attention to causes of failure in probation work.

The Institute recommended the selection procedure which, with some agreed modifications mainly conditioned by the amount of time available, has since been followed. Rating sheets are used by probation inspectors for recording the opinions they form of the applicants they interview. The enquiries addressed to referees have been designed to elicit information about the particular qualities and shortcomings shewn by the job analysis to be significant. Those applicants who are invited to attend before a selection committee of the Board are given a general test of intelligence, and they are observed by the selection committee in a group discussion before each is interviewed separately by the selection committee. Those recommended for training finally undergo a general medical examination; if there is doubt about temperamental stability or capacity to withstand emotional strain the medical examination is made by a psychiatrist.

The training programme for each student is planned with regard to his qualifications and experience. It is a general rule for those under 30 to undertake a full-time course at a university for a social science diploma, unless they already hold one, before proceeding to specialised training for probation work. Those over 30 embark at once on specialised training.

Specialised probation training extends over a period of nine months to one year. All probation students spend about three months at Rainer House, the house provided by the London Police Court Mission as a residential centre for theoretical courses. Here lectures are given on law, criminology, casework and social administration, and on special aspects of probation work such as after care: psychiatrists lecture on human growth and development and on matrimonial conciliation. Seminars taken by the lecturers during the later part of the course relate theory to practice, and the probation inspectors responsible for training hold tutorials on casework principles and methods and their application to the probation setting.

Practical training is planned to fit the needs of the student: those with little previous experience of social casework first spend two to three months with a family casework agency, or sometimes a few weeks in a residential training establishment before they begin specific training in probation work. All students have about six months training with experienced probation officers: where possible, a period of about four months is spent under the tutorship of one officer, so that a short initial induction can be followed by a longer period during which the student takes responsibility for a small case-load under the supervision of the tutor officer. Recently officers in one or two areas have co-operated in the experiment of having a group of students in one centre so that they, and the tutor officers, may benefit from corporate experience.

The change in the nature of probation casework is reflected in the new conception of training for it. In the first place, there has come about in the last few years a much closer integration of theory with practice, due to a growing confidence that theoretical principles are demonstrable in practice. Secondly, the tutor officer no longer regards himself simply as a demonstrator of his own highly individual methods of probation work and a provider of opportunities for other observation: he knows that he is rather a teacher of the specific skills common to sound social casework practice. This advance from practical training, which in the past was often little more than passive observation, to positive teaching of methods and techniques calls for special abilities in the tutor officer. The good caseworker is not necessarily the good teacher and the good teacher may not be the best caseworker. In the last few years probation officers and Home Office staff have together devoted much thought and effort to the development of the special abilities required in the tutor officer. Probation training schemes now benefit greatly from the 'feeding back' of ideas by the service, and from a growing sense of partnership between those in the Home Office who organise training and those in the field who help in its various phases.

The probation service is also taking part in a new experiment in the training of social caseworkers. This is the fourth year in which the London School of Economics with the help of the Carnegie Trustees has run an experimental training course in applied social studies, and similar courses have been started at the Universities of Birmingham and Southampton. These courses apply the generic principle to social casework training. On completing social science courses at universities, students who aim to become probation officers or almoners or family welfare or child care workers together undertake this year of professional training. Throughout the year they spend two days weekly in theoretical study at the university. On the remaining days, they go out for field work training, which is divided into two periods. The

first few months are spent in an agency or organisation other than the one they hope to work in: in the second period they are trained by the service of their choice. These students work under the direction of tutor officers who have themselves received special training in the supervision of casework students. Each student discusses his cases weekly with his tutor, and there are also regular group discussions. The emphasis throughout the course is upon the common elements in casework, no matter in what setting it is practised, but necessary attention is also paid to differences inherent in the client's particular circumstances, whether it be sickness, delinquency, or some other condition that makes him a subject for a caseworker's attention. The aim is to fit students for a career in any branch of social casework, while giving them special understanding in the field they have chosen.

Whatever the training, it is now a reasonable assumption that a probation officer on first appointment has some knowledge of the principles underlying human behaviour and has tested them out in practice. Under supervision, he has learned to appreciate how attitudes influence behaviour and the relationship between caseworker and client. Furthermore, he has acquired certain skills, which he will develop fully as he works in a team setting and with consultative help, as well as supervision from senior colleagues.

Training is a continuing process and in the last few years a good deal of attention has been paid to in-service training. Probation officers who have completed some three or four years in the service benefit by joining in more advanced training courses during which they have opportunity to review their knowledge in the light of experience and to examine and improve the skills they practise. Among the in-service courses arranged are the following:—

- (a) Groups of serving officers meet weekly for a year to eighteen months in London and other centres, for discussion under a psychiatrist or other leader experienced in this type of tuition. The nature of these courses is shewn by the title chosen for one of them—'Ourselves and Our Cases'.
- (b) All principal and senior probation officers have attended ten-day courses designed to give them an understanding of the principles and purposes of casework supervision.
- (c) Courses have been arranged for tutor officers, and these have been seen by all concerned to improve the quality of the practical training they are able to offer to students.
- (d) Advanced courses in matrimonial casework have been held and it has been found useful to follow these a few months later by a week-end meeting of the group and teachers, to examine its practical results and consider new problems that have come to light.

- (e) For the past ten years one or two refresher courses lasting about a week have been arranged at universities for the purpose of keeping probation officers abreast of new developments in related fields of work. Probation officers also attend short courses for social case-workers or those concerned with the treatment of delinquents, planned by universities and other bodies, including the Institute for the Study and Treatment of Delinquency.
- (f) Finally, on the advice of the Probation Advisory and Training Board, a scheme was introduced in 1955 whereby three serving officers are enabled annually, without loss of pay, to follow part or whole time advanced courses of study extending over an academic year. One officer each year has taken either the mental health course at the London School of Economics or the Tavistock Clinic course for case-workers, and two officers have attended at the Family Discussion Bureau on several days each week.

It can be said with confidence that, because of the improved training methods briefly indicated above, the probation officer is today better aware than formerly of what he is doing. He makes a more conscious use of personal relationships. He is able to use his time more constructively and economically because of his greater understanding of the meaning of each client's behaviour, and he can more readily and purposefully exercise his skills and exert his personality. Training has also given a positive meaning to casework supervision, which is gradually coming to be regarded as a partnership of two or more people, exploring together ways and means of helping a client.

So much for the aims of probation training and the various methods by which it is sought to achieve them. Assuming that the universities can give their social science students an adequate background of scientific knowledge, especially in the fields of psychology and sociology, and that a further year of professional training can produce the basic casework skills, there are a number of questions awaiting final answer.

In professional training for probation work, and even more during in-service training, regard is had to the fact that the welfare state, and governmental policy of full employment, has relieved the probation officer to a great extent of the task of giving material aid. The establishment of other social services, such as the Children's Service, has defined more closely the sphere of his work and the problems demanding his personal attention. On the other hand, within this circumscribed field, the probation officer's task has increased in complexity. Courts are now entrusting to his care more difficult persons, sometimes persistent offenders for whom in the past few, if any, courts would have contemplated supervision, in the open. The problems

presented by clients in whose social breakdown personal maladjustment has been a decisive factor lead him to attempt work of greater depth.

The advanced in-service training now being provided for an increasing number of experienced officers is designed to help them to work more intensively with selected clients. Certain risks are recognised. Some of the in-training schemes described above give rise to apprehension lest anxieties may be created rather than relieved and the confidence of the so-called natural caseworkers be undermined. Are modern training methods stimulating a hunger there is no present means of satisfying? Admitting that these risks will be incurred for some time to come because of the scarcity of persons expert in leading groups for the discussion of problems of human behaviour, this is a comparatively short-term problem which will be solved as the probation service itself produces sufficient capable leaders.

How should selection be made for advanced in-service training? The interest of members of a discussion group demands the exclusion of those whose primary motive, albeit unconscious, is to get help in their personal problems, but it is not easy to do so without creating anxiety. Those who lack the background knowledge necessary for effective participation in advance training may suffer a damaging loss of self-confidence either by exclusion or through inclusion followed by failure to participate effectively.

The appropriate length for each type of in-service course is not easy to determine. On the one hand, a course ought not to terminate before its purpose is achieved. On the other hand, if a course is prolonged beyond what is necessary, there is wasteful expenditure of the experts' time and of money, and courses for others may have to be deferred; moreover an undue strain is put on officers who have contrived to make time to attend the course while continuing their full time professional work.

In facing these problems, personal, administrative and technical, those who are concerned with probation training, whether as members of the Probation Advisory and Training Board or of probation committees, whether probation officers, outside experts, or Home Office staff, do not lose sight of the fact that, as in the past, the probation service looks to men and women who are, to some extent, dedicated. The newer recruit to the Service rejoices in technical equipment better than that of his predecessors, and older officers spare no pains to master theories and techniques unknown when they entered the Service. These modern aids to casework carry their own obligations, and it is certain that the traditional spirit of service and appreciation of the social significance of each individual remain fundamental to sound probation work.

NOTES AND CRITICISMS

PROBATION IN SCOTLAND

It is now seventy years since Parliament gave tentative statutory sanction to the idea of giving transgressors an opportunity of rehabilitating themselves by the Probation of First Offenders Act, 1887. The first offenders to whom the benefit of the act was confined were supervised by voluntary social workers, by Court missionaries and by ministers of the Church. In spite of its limitations and the absence of a trained staff to assist the probationer, the experiment proved successful in its results, and later statutes, the Probation of Offenders Act, 1907, the Probation of Offenders (Scotland) Act 1931 and the Criminal Justice (Scotland) Act 1949 have established a national probation service administered by the Secretary of State for Scotland through the Scottish Home Department, have empowered the Courts where it is expedient to do so to make a probation order instead of sentencing an offender convicted on indictment or proceeding to conviction in a summary prosecution, have made anxious provisions as to the scope and contents of an order and the result of a breach of its requirements, and have imposed additional duties on probation officers to assist the courts with information about young persons. In each probation area—a county or large borough—a probation committee is now set up to appoint probation officers and provide for an efficient service.

In administering the service the Secretary of State is assisted by the Scottish Central Probation Council, which advises him upon matters referred to it or upon matters which the Council thinks it right to bring before him. Each year the Council considers returns made from each probation area as to such matters as the number and duration of probation orders made, the Courts by whom they were made, the type of offenders placed upon probation, the percentages of success and failure in the treatment of probationers of each sex and of various ages, the staff of probation officers in each area and the case-load of each officer. In order to be fully conversant with the administration of the service throughout Scotland, the Council regularly meets with probation committees to consider with them the efficiency of the service in each area and the special difficulties presented by local conditions. The Council also assists probation committees by interviewing candidates for appointment to the probation service and by maintaining a central register of such candidates as are considered to be suitable entrants, so that a probation committee requiring to make a new appointment can, if so minded, select an approved candidate. This function is of great importance in view of the increased responsibilities of probation officers and the wider scope of their duties, and of the knowledge which experience has given of what is required for helpful and effective supervision of offenders. By anxious consideration of each candidate an endeavour is made to secure as far as possible that the quality of approved candidates will be commensurate with the responsibilities of an officer. Towards the same end the Secretary of State has established an annual residential course of three weeks duration, which must be attended by a new probation officer before his appointment will be confirmed by the Secretary of State. At this course expert instruction is given on such matters as the factors conducing to delinquency, the methods of treatment of offenders upon probation, the preparation of reports, interviewing, procedure and

law. These courses are also used by the probation committees as refresher courses for their officers. Apart from their value in instruction, probation officers obtain benefit from the interchange of experience and opinions with other officers at these schools. The Scottish Central Probation Council considers that the provision of adequate training for probation officers is essential for the efficient working of the service, so that a probationer may have the benefit of skilled help during the period of the order and a full opportunity for rehabilitation.

It is, unfortunately, necessary to emphasise that the work of a probation officer is a highly skilled employment. Owing to the experimental origin of probation and to widespread ignorance of its nature and objects, it is still commonly assumed that a person of good character and goodwill with a desire to do social service among transgressors is by his nature and ideals qualified to act as a probation officer. The truth is that just as a doctor requires to be highly skilled in order to assist in restoring his patient to health, a probation officer requires to be adequately instructed and trained before he can diagnose and treat the delinquent remitted to his care. In his report for 1956 the Principal Probation Officer for Glasgow, Mr. Robert Thomson, wrote thus: 'When an offender is placed on probation, the probation officer must make a detailed study of the probationer, his or her social background, personality, weaknesses, etc., and within three months of the commencement of the probation period have decided on and put in writing all the factors which have contributed to the delinquency. A treatment plan must then be made showing how the various factors are to be treated, and decision taken on the various therapeutic helpers upon whom it is necessary for the Probation Officer to call for assistance in the re-establishment of the delinquent. A new form of statutory case-record-keeping has now put this advance on a sound foundation.' This summary, from one of wide experience, of the scope of the preliminary diagnosis and decision is itself sufficient to show that goodwill, though admirable and essential, is an inadequate qualification for a probation officer. Consequently the aim of the probation service in Scotland must be to secure, so far as possible, in each area or combination of areas, a qualified, full time staff.

This is all the more necessary because the work of a probation officer under recent legislation now includes the preparation of reports for the Court upon persons under seventeen years of age charged with an offence, and upon persons between seventeen and twenty years of age inclusive, who may be sent to prison. The decision as to the appropriate method of dealing with an offender is one of the most difficult and anxious duties of a judge. Any judge required to deal with such cases in a criminal court will pay tribute to the assistance which he has received from consideration of a report by a probation officer and from an interview with the officer. If these reports are to achieve their object and assist the Court, they must contain accurate information about the offender's background, a careful assessment of his record, character and attitude, and a note of any special circumstances which may require consideration in the proper disposal of the case. Such reports can only be prepared by a trained and competent officer.

In Scotland, however, it is impossible to make general statements about the requirements of the probation service, because the particular circumstances of the areas differ so greatly. In the industrial centre of Scotland there are large cities and towns, areas of dense population, where the incidence of crime is comparatively heavy, and where proximity enables an officer to keep in touch with a fairly large

number of probationers. On the other hand, in the rural and mountainous areas of the north of Scotland and of the Border counties, there is comparatively little crime, and the difficulty and expense of travelling are factors which limit the number of cases which an officer can handle, and which have, hitherto, resulted in the use of part-time and voluntary workers. The satisfactory organization of an efficient service in these rural areas is one of the chief problems in Scotland, since, obviously, it is necessary that a delinquent who is suitable for treatment by probation should not be deprived of its benefit by geographical difficulties.

As the work of a probation officer is delicate and responsible, and as the object of probation is the restoration of the offender as a useful member of society, it is considered that case committees ought to play an important part in the operation of the service. If these case committees are properly appointed and managed they have a two-fold function; first, they enable the officer to consult with wise and experienced citizens about the difficulties encountered by him in his treatment of particular offenders, and, second, by meeting probationers when opportunity occurs they help them to realize that society is willing to receive and befriend them.

Probation is widely used in the Sheriff Courts where serious crimes are dealt with on indictment and less serious offences by summary procedure. The Sheriffs and Sheriffs-Substitute, who are professional judges, recognize the value of probation and the help which probation officers render to the Courts. In the High Court of Justiciary, the supreme criminal court, it is natural that there are few opportunities of making probation orders, since the persons brought before the court are generally charged with grave offences or are hardened criminals. Nevertheless, probation is occasionally used there. In the local courts presided over by lay magistrates, probation could be more widely used, and it is unfortunate that some magistrates prefer to deal with an offender by a fine or short term of imprisonment although the circumstances of the case are suitable for probation, because they do not realize that even a light sentence is a permanent blot on a person's record and a handicap throughout later life.

Experience has shown that the process of rehabilitation of an offender takes time, and that speedy results cannot be expected after he is entrusted to the supervision of an officer. Accordingly it is desirable that orders should be made for a period which will be sufficiently long to enable the probation officer to exercise a beneficial influence upon the probationer, and to enable the probationer to be firmly set upon his new course. A period of months is quite inadequate, and a year is rarely enough. The inclination in some Courts to restrict the period of an order is due to the mistake of looking upon it as a punishment rather than as a method of treatment.

Again, it is unfortunate that probation is used comparatively seldom in the cases of adult offenders. There is an impression that because it involves supervision it is inappropriate for an adult. The truth is that a criminal offence may be committed by a grown-up person in consequence of some emotional crisis due to domestic or other personal circumstances, and that, when the origin of the incident and the background of the offender are skillfully investigated, the crisis may be resolved and the delinquent restored to upright conduct. Further, the records of the Scottish Home Department show that in the case of adult offenders probation has been so successful when tried that in nearly 90 per cent of the cases the period expires without the reappearance of the offender in court.

The future development and expansion of the probation service in Scotland will depend mainly on three factors: —

First, the education of the public and of lay magistrates in the advantages of probation as a tried and proved method of treatment of offenders, both adult and juvenile, and thus as a preventive of crime.

Second, the realization that probation is a restorative treatment requiring the co-operation of skilled agents of many kinds in appropriate cases—probation officers, psychologists and psychiatrists, employers, clergymen and social workers.

Third, the provision throughout Scotland of a staff of probation officers adequate in number and adequately trained to perform the responsible duties to the offender and to the courts which have been laid upon them by enlightened penal legislation in recent years.

H. W. GUTHRIE.

NEW PROJECTS FOR PROBATION IN FRANCE AND BELGIUM

One of the outstanding achievements of penal reform in the last decade is the spread of probation in the English and American sense among the civil-law countries of the European continent. From a historical point of view, this is the second phase of a movement which began almost simultaneously with the first probation laws in Massachusetts and the first tentative steps in the direction of probation in England. These precedents inspired R. Bérenger when he drafted his famous Bill of 1884 which was followed by the Belgian Act of 1888 and the French Act of 1891. These Acts created the legal institution of the *sursis*, i.e., the conditional sentence in the sense of a mere conditional suspension of execution of a given fixed prison sentence. This Belgian and French model was soon accepted by numerous countries in Europe and more recently among the South American republics. In 1912, France and Belgium introduced the other element of probation, the personal supervision of the offender as a non-punitive constructive measure for juvenile delinquents as *liberté surveillée*.¹

The closer co-operation in the field of criminology and especially the efforts of the United Nations, notably by the European Seminar on Probation in London in 1952, led to the second and more decisive phase in the adoption of probation by countries of the European continent. It was realized that the strength of probation lies in the combination of two elements, the suspension of punishment *and* personal care and supervision. At the same time, it must be recognized that the characteristic forms of probation, as it is practised in England, are inseparably connected with the traditional patterns of legal procedure under English common law. In order to find the place where the probation idea could materialize within the framework of continental legal procedure, France and Belgium, the model countries of the conditional sentence, fell back on the principle of the *sursis*. Recent draft Bills in both countries are intended to use the *sursis* as 'the channel for the introduction of probation'.

In France as well as in Belgium, practical experiments preceded the inauguration of the new measure by legislation. In four French court districts the public

¹ M. H. Michard, 'La Liberté Surveillée'. Published by the Centre de Foundation et d'Études de l'Éducation Surveillée, Vauresson, 1953.

prosecutor undertook to suspend the execution of a prison sentence if the offender accepted certain conditions, with the prospect of a final pardon after a satisfactory termination of a fixed probationary period. In Ghent, the public prosecutor, with the concurrence of the judge, suspended even the prosecution itself under similar conditions, a mode of procedure known in Scandinavian countries. However, probation cannot be expected to take its proper place in the legal system unless it becomes a judicial measure like other punishments and measures of public security.

The French Draft Bill of 1952, reintroduced into Parliament in 1956, is intended to supplement the *loi Bérenger* of 1891 in the following way. For first-offenders any fine or prison sentence (simple imprisonment only!) can be suspended with or without the imposition of probation. For repeaters with a previous sentence of no more than one year's imprisonment, a new sentence can only be suspended if, at the same time, probation has been ordered. Probation in this context means that the offender has to comply for the statutory period of five years with those requirements and conditions which have been determined by the court for the reformation and social rehabilitation of the offender. He is not required to give his consent. For the appropriate selection of offenders deemed suitable for probation, provisions are made for social enquiries and medical and psychological examinations. These enquiries and examinations may be ordered by the investigating magistrate (*juge d'instruction*), or by the trial judge. In the latter case, the Draft Bill of 1952 provided that the court should make the order for the enquiries and examination simultaneously with the decision of the defendant's guilt and defer the selection of punishment to a later date. This legislative proposal was a first step in the adoption of English forms of procedure with its twofold decisions of conviction and sentence and a possibility of an interval, a '*césure*', between them. The ultimate result of such legislation would be that the French judge will have a threefold choice, a conditional sentence in the sense of the *sursis*, *sursis* with probation, or an ordinary prison sentence which has to be served.

The Draft Bill of 1952 is the subject of a valuable study by Dr. Henriette Poupet.² The author gives a comparative analysis of the traditional French *sursis* and the English probation and then proceeds to critical comments on the French Draft. Her observations on English probation are an encouraging example of the progress which has recently been made in comparative legal studies. Every essential feature has been properly described and explained. Perhaps too much emphasis has been laid on the recognizance as the historical origin of modern probation. Dr. Poupet is right in that she constantly stresses the element of constructive care and supervision as the essential characteristic of probation, any form of probation, not only probation in English law, while the *sursis* is a mere deterrent form of pressure through a specified impending prison sentence. In the theoretical conception she follows the penetrating studies of Marc Ancel. In conformity with his refined version of the new doctrine of social defence, with the emphasis on the 'new', she sees the aim of this movement in a protection of society primarily and deliberately by the social and moral rehabilitation of the offender and thus by recognizing the dignity of the individual, self-responsible

² Henriette Poupet, 'La Probation des Délinquants Adultes en France'. Préface de Marc Ancel. Publication du Centre d'Études de Défense Sociale de l'Institut de Droit Comparé de l'Université de Paris, Éditions Cujas, Paris (no date).

human person. In this sense, probation would be almost a prototype of a measure of social defence.

From this theoretical basis, she welcomes the step from mere *sursis* to probation with its full pre-sentence report, with the flexible character of the conditions imposed and the aim of social adjustment beyond a mere absence of reconvictions. Her main criticism is that the legislative proposal does not mention the offender's personal supervision, the indispensable ingredient of any form of probation. She also regrets that the probationary period should be identical with the statutory five-year period of the traditional *sursis* with no possibility for a discretionary modification by the judge.

In the course of the parliamentary procedure, the Council of the Republic made a number of alterations.³ The most important is the insertion of a provision which amounts to an explicit statutory recognition of personal care and supervision undertaken as *aide bienveillante* by a service which should be organized by a future administrative decree, but is apparently expected to be performed primarily by professional social workers. These prospective French probation officers shall work under the President of the Chamber of Accusation or a Magistrate to whom he has delegated his functions. M. Charles Germain, for many years an eminent head of the French prison service, would like to see this function in the hands of the President of the After Care Committee (*Comité d'Assistance post-pénale*), who, as a judge, has certain responsibilities in respect of the executive side of the administration of criminal justice. While these modifications of the original Draft must be welcomed, two other alterations appear to be retrograde steps. The new version abandons the *césure* between conviction and sentence and reintroduces the traditional form of the one and unified final decision of civil-law procedure; social enquiries and medical examination have to be ordered *before* guilt and punishment are determined. The lawgivers also feared that probation with the possibility of special judicial requirements could lead to undesirable restrictions of personal liberty and unjustified inroads into the private life of the individual. The new version of the Draft Bill allows only the following three conditions to be imposed: acceptance of the moral and material help of the probation officer by the offender and his family, satisfactory conduct in conformity with the direction and advice of the probation officer, and the requirement, not to leave the place of residence or the employment without informing the probation officer beforehand. Conditions of residence, of mental treatment, of training for a certain occupation would not be permissible. In respect of the time limit, the latest Draft is more flexible. Within the statutory limit of five years for the *sursis*, the actual supervision should not exceed a period of three years. In this form the Draft Bill is at present before the National Assembly.

In Belgium, the first step of this reform movement was the Act of 1947 which extended the application of the *sursis* beyond the limits of the original *loi Lejeune* of 1888. The statutory conditions under which a conditional sentence could be granted were widened, and the circumstances in which the suspension had automatically to be revoked were restricted. The introduction of a probation system proper has been the subject of three consecutive Draft Bills of 1948, 1952

³ For the following: C. Germain, 'Le Projet de Loi Français sur la Probation devant le Parlement'. *Revue de Science Criminelle et de Droit Pénal comparé*, April-June, 1957, pp. 333-52.

and 1956.⁴ The first two Drafts of 1948 and 1952 correspond to the French proposals by supplementing the traditional *sursis* with provisions for pre-sentence reports and conditions imposed during a probationary period, a *sursis surveillé*. The more recent Draft of 1956, however, is a bold step following more closely the English and American legislative precedents. In a similar way as in the present Swedish law and in the recent German Juvenile Court Law of 1953, the new proposal leaves the court a choice between two ways of procedure. They may either, as an English court would, decide on the defendant's guilt only and suspend the decision on punishment, or they may give a sentence and suspend its execution. In both cases they may, if it appears advisable, put the offender under probationary supervision for a specified period. Unlike German legislation and French proposals, the Belgian lawgivers require the defendant's consent both for social enquiries and for probationary supervision. As to the choice of the actual stage in criminal procedure where suspension applies, the meting out of the sentence or the execution of the sentence, the rule seems to be the latter one, while the first one has been intended as an exceptional favour only. For the actual supervision, the Belgian projects too envisage a service of professional social workers. With these proposals, the Belgian lawgivers accept the possibility of a *césure* in continental criminal procedure, a proposition which has been justified before on theoretical grounds by Marc Ancel in France and Cornil in Belgium. There still remains the question of the appropriate form and the right moment for the introduction into the trial of the pre-sentence report with its evidence on the defendant's private affairs. A Belgian critic pointed out the great inconvenience which could be caused for the defendant and his family by an undesirable publicity of these personal matters.⁵

For a critical assessment of these developments one is tempted to measure progress in terms of an assimilation of other countries' law and administration to the English probation system and its standards. Since probation in England has a wider and more flexible scope and a more intense technique, such comparisons are justified to a certain extent. At the same time, however, the prospects of new probation schemes on the Continent depend on the way in which they fit in with, and develop harmoniously, the traditional and generally accepted pattern of the administration of justice. From this point of view, a threefold system of suspended sentence, probation, and imprisonment proper would be a good and progressive solution for a civil-law country. The outcome of such reforms will mainly depend on the quality of the new probation staff and on the spirit and efficiency with which their members do their work. Real progress will be assured to the extent to which the new continental forms of probation lose their semi-punitive character implied, in the view of many commentators, in the inherent limitation of personal liberty, and will be regarded and applied primarily as social casework with the power of the law behind it.

M. GRÜNHUT.

⁴ Journées Franco-Belge-Luxembourgeoises de Science Pénale, 'Le sursis et la probation dans les projets de loi français et belges'. With contributions by J. Constant, C. Germain, G. Hoornaert and R. Vouin. Extrait de la *Revue de Droit pénal et de Criminologie*, June 1957.

⁵ *Ibid*, G. Hoornaert, pp. 91 and 98.

NORMAN HOUSE

Norman House is a private venture begun in 1954 to give the homeless offender who wants it the chance of going straight. The work was made possible by a generous grant from The London Parochial Charities supplemented by grants from other Trusts and by voluntary subscription. It receives no statutory aid.

Most men in prison announce their intention of 'turning it in' when they are released from the sentence they are then serving. Some are deluding themselves. Some are sincere but incapable of achieving their aim because of their deep-seated personality defects. But there are others who have both the sincerity of purpose and the capacity to realise it, but who have nowhere to turn to on their discharge from prison except the common lodging houses. Both the needs of these offenders and the nature of the lodging house population impose a handicap which they cannot often overcome. The offender's memory of the discomforts of prison life is shortlived. The will to find work and good lodging wilts under pressure. If jobs are hard to find there's always someone at hand to sympathise. Only mugs work, anyway. 'I tell you, mate: people aren't interested if you've been inside. How do they expect a bloke to go straight if they don't give him a job?'

Sometimes an offender appearing before the D.P.A. Case Committee some three weeks before his release protests vigorously when it is suggested to him he should go to a lodging house. 'Not me, sir. I know what those places are like. I'll sleep rough first'. The Chairman may remind him he is not in a position to pick and choose, and that he should go to a lodging house or hostel, find a job, save his money, and then move out into private lodgings. The offender gives up the argument, shrugs his shoulders as though he were saying, 'It's no good arguing. I know. I've tried it before'. Norman House was designed to help this type of offender. It selects some for residence at the House. But it also helps others who show a healthy aversion to resorting to lodging houses by recommending them for work to the local Employment Exchange, and for a lodging allowance to the local office of the National Assistance Board after first having helped them to find lodging, and sometimes lending them money to pay a deposit on the room. As a result of the co-operation of the Assistance Board and the Employment Exchange every offender who has come to the House for help with work and lodgings has found both, in most cases on the day of his discharge from prison. This service is not strictly part of the work of the House. The House undertakes it because otherwise it would be left undone. There is an abundance of good-will on the part of the N.A.B. towards discharged prisoners. If it does not always reach them that is because the agencies involved in the prisoner's aftercare do not always use arrangements that exist to lessen the prisoner's difficulties.

Since the House was opened ninety people have been taken into residence. Their convictions average four per man. None has returned to prison while living at the House, and only one committed an offence, for which he was placed on probation and allowed to return to the House. One of the main features of the House is the emphasis it lays on *selection*. Offenders are seen while they are serving their imprisonment, and if they are deemed suitable they are visited regularly until their release. This gives the opportunity of developing a relationship with the offender. He learns about the House and its people so that he feels he knows it before he

ever sees it. His arrival is expected. 'When's the next man coming?' is no unusual question at the House. 'What's he like? How old is he? What College is he at?' These are the usual questions, and almost never 'What's he in for?' It may be that is regarded as the offender's private business, or that he reveals his offence in his appearance, his mannerisms, his speech, or his general behaviour, and it is therefore superfluous to ask.

Much of the work of selection has to be done by the Warden of the House. As he is a visitor at one of the London prisons, and a member of the Case Committee of that prison, seventy per cent of the offenders who have come to the House have been selected from that prison. But as knowledge of the work of the House has spread the field of selection has widened. Social workers in the prison service and outside it request a place for offenders in whom they are interested. In particular, probation officers seek the help of the House, either for offenders who are undergoing imprisonment, or who have been placed on probation and need more supervision than the probation officer is able to give, or again for offenders who are about to appear in Court, and whose chances of probation would, the officer thinks, be greatly improved if he could place the offender at the House. The co-operation that now exists between certain Metropolitan probation officers and the House gives the offender the greatest help that probation is perhaps capable of conferring. For not only is the offender reporting to his probation officer as required, he is also living *voluntarily* at the House where supervision is in effect continuous, applying as it does to all who choose to live at the House, most of whom are not on probation. The probationer thus is helped to see himself as one of a group who are living together because they need help. He is under no condition of residence, but is free, as the other members are free, to leave whenever he chooses. The Warden is free, too, to require of him what is required of the others who live with him, and to require him to find lodging if he is not applying himself to the best of his capacity. Only once has this proved necessary.

In all cases, whether there has been opportunity or not of developing a relationship with the offender, the Warden asks for the fullest information that may be obtainable. Here again probation officers co-operate fully; so do other social workers if any information is available. So far as the prisoner is concerned, his record is available only to prison officials, officials of the D.P.A.S., and certain others who are involved in the administration of the system. It is right that great care should be taken with prisoners' records. But it does not always coincide with the prisoners' interests. It is through interviews with the prisoner, therefore, that the Warden obtains most of the prisoner's history. This can often be supplemented by information from other sources (e.g. probation officers where a probation order has been made). But at its best it is unsatisfactory for much information that has the greatest relevance may be unrevealed. A prisoner who may have been treated at a mental hospital for offences against the person, for example, may be understandably reluctant to disclose it, or if he did he may brush it aside with 'I had some nervous trouble'. Sometimes a clue can be got from the nature of the treatment given. But where the offender replies, 'I had no treatment. Just talking', the chapter is clearly closed for the time being.

It is our experience that the offenders who have done best at the House are those about whom the fullest information was available, and with whom there had been the opportunity of establishing a relationship before they came. Some of the most

unsatisfactory offenders were those who were taken on the recommendation of others, but without sufficient information to support the reservation the Warden had made when he interviewed them.

Another main feature of the House is the emphasis it lays on *family*. At its inception the function of the House was to provide the selected offenders with the help they needed to re-establish themselves in society, all the while subjecting them to a homely atmosphere. The House provided the opportunity. It was left to the offender to use it.

That was the theory. In practice it has never worked out so simply. For not only have the offenders needed what the House set out to supply, they have needed much more besides. Most of them have come to the House destitute. They have sorely needed material help. But above all they have needed a feeling of belonging, and a sense of family. The Warden and his wife are father and mother to them all. They get them up in the mornings and see them off to work, as other parents see their children off to school. They are at home when they return in the evenings, to listen to accounts of the day's happenings, trifles by adult standards but incidents of great moment in the offenders' lives. They are available when supper is over, and those who have not gone out come running for cotton and needle and buttons, or paper and envelopes, or advice on personal problems. Somebody may be depressed, and somebody sulking over a newspaper which he pretends to be reading. Somebody may be missing. The Warden finds him in his bedroom, crying from a sense of loneliness. A few minutes later he is sitting by the fire downstairs, happy as a sand-boy now he sees he is wanted after all.

It is not the Warden and his wife who have deliberately developed this sense of family, but the needs of the offenders. During its first two years the House concentrated on the weak, immature, inadequate offenders. Their offences reflected their inadequacy. They stole bottles of milk, broke open gas meters, travelled on railways without paying their fare. They broke into pavilions, or were found on enclosed premises, because they needed a place to sleep. They were convicted under the Vagrancy Act for wandering abroad or being suspected persons. Even when they entered the field of shop-breaking or warehouse-breaking, the material profit was small. Often they were caught in the act. They did not strike us as criminals, but children trying to live in a grown-up world. The House gave them the tools they said they needed to resettle. But it was obvious that some had never learnt to use them. They were the offenders whose life had been spent largely in the protected environment of Children's Homes and Approved Schools, in Borstal, the Army, and prison. Other offenders knew how to use their opportunity but lacked staying power. The job they found which today was 'smashing', tomorrow was a 'dead loss'. They knew somebody who was getting threepence an hour more for doing the same work. They'd never liked that sort of work, anyway. If they had been allowed to, they would have thrown away all the progress they had made, and returned to the rootless existence they were accustomed to.

It was this rootlessness that presented one of the major obstacles to the offenders' resettlement. They had no purpose. They had broken with their families, some since their Army days, some since early childhood. And some had never known family. They were responsible only for their own life, and that had been only for relatively short periods. Life had meaning only in the present. The past was too painful. And for those for whom the future had reality, the capacity to

sacrifice present pleasure and to adhere to a set plan was defective. In two cases it seemed to have been damaged beyond repair. That is why, perhaps, the immature offender has resisted all persuasion to save money from his wages. When he has given the Warden money it is 'to look after', and not as savings. If the House was to achieve anything, therefore, it had to build on a feeling of belonging to the family. Offenders got up, went to work not just because they had to, but also because they saw there was someone who cared about them. If they bought a new shirt, or a pair of shoes, or a jacket, there was someone to notice it. Slowly there came a sense of purpose, and with it a sense of the future.

The Warden and his wife have to shoulder the greatest part of the burden, but they are not without help. There is an assistant to the Warden who is usually preparing himself for professional social work, and finds the experience of working at the House and the training it gives him of much advantage. There are also not more than three non-offenders who follow their own occupations, and by living at the House contribute to the work more by their example of living than by any set duties. Their presence at the House avoids segregation of the offenders, and helps to create a feeling of naturalness, for in our experience the non-offenders, too, have had their problems.

It had been the policy of the House not to accept any offender who was in need of psychiatric treatment. Men with convictions for sexual offences, for example, would not be considered. This soon proved unsatisfactory. One offender who had eight convictions for larceny turned out to be homosexual. While he lived at the House his stealing ceased. When he left for lodging it broke out again, and he was reconvicted. He returned to the House on his release from prison, and again the stealing ceased. He is now in lodging, but maintaining close contact with the House. Now he claims people are stealing from him.

Once the House began to send offenders for psychiatric treatment, it needed little persuasion to accept offenders who were clearly seriously disturbed, but who had made progress under treatment and were expected to continue to progress at the House. This is an important development in the work of the House. Its origin is too recent to assess its impact on the character of the House as a whole.

The average length of stay has been three and a half months, but with the introduction of offenders undergoing treatment the length of stay must almost certainly increase. When they are considered to be ready for lodgings they are helped to find a room conveniently close to the House so that the contact may easily be kept. Twenty offenders have returned to prison from lodgings. More have tottered uncertainly and eventually disappeared. This is the aspect of the work that is at present occupying the attention of the House Committee. It may be that another House is required where the offender has to accept a greater measure of independence while the link with the present House remains strong. This is best illustrated by the case of Fred who lived successfully at the House for over four months. He moved into lodgings locally. Within a few days rumours were circulating that Fred was not working. The Warden investigated and found Fred in bed when he should have been at work. Fred's response to correction revealed his newly found sense of independence. 'I am not under your supervision any more.' Three days later Fred was standing on the House doorstep. 'Please can I come under your supervision again?'

Our experience at Norman House indicates there is a strong case for compulsory

aftercare for certain types of discharged prisoners. Our experience indicates too that, in general, it will be gladly accepted by the offender. In some cases discharged prisoners should be required to live at hostels similar to Norman House. In other cases where residential treatment is not considered necessary, they should submit themselves to supervision in much the same way as an offender placed on probation. This supervisory aspect of aftercare should be done by probation officers, partly because they are already interested in certain classes of offenders, but chiefly because nobody is better fitted and placed to undertake the task. The ranks of probation officers would need to be increased quite considerably to meet the extra burden, but that is a small price to pay for an aftercare service that would benefit both the community and the individual who offends against it.

MERFYN TURNER.

SOCIAL ENQUIRIES AND THE ADULT COURTS

Some publicity has recently been given to the nature and purpose of probation officers' reports to adult courts. The following are some observations on the content and method of presentation of such enquiries.

Ideally, probation should be a method of treatment applied on a selective basis, and suited to the needs of the individual offender.¹ The use of probation on a selective basis implies that some offenders are more suitable for this form of treatment than others, and to this end careful and systematic enquiries are needed. The extent to which a probation officer's report will be acceptable to a court seems to be very much bound up with the question of his having achieved professional status in his own field. On the one hand, it may be felt that, by reason of his qualifications and experience, he has the right to be treated as a professional witness, and on the other that, at best, he can only present certain facts that may or may not have been verified, and is in no better position to advise the court than any other official. Those holding this latter view would possibly still see the probation officer in terms of the early 'missionary' rather than as a trained caseworker with specific skills such as those referred to by Newton in a recent paper in this *Journal*.² It is of course true that the origins of probation lie in the fusion of an early humanitarian attempt to do good works of a reforming nature with a desire to suspend if possible the more severe aspects of the criminal code, plus a more recent awareness of an individual's basic emotional needs; this awareness having been increasingly clarified by our advances in the fields of psychiatry, psychology, sociology and criminology. It is this alliance of humanitarian endeavour with scientific awareness that perhaps distinguishes the probation casework field from some others.

Grünhut³ clarifies the concept of a social enquiry, feeling that it should be a complete study of the inter-acting psycho-social forces and stresses that impinge upon the individual. Official recognition of the need for careful selection and investigation on which appropriate treatment could be based was indicated as far

¹ See: 'Probation and Related Measures'. (United Nations Publications. p. 5. New York, January, 1951).

² G. Newton, 'Trends in Probation Training', *Brit. J. Delinq.*, Vol. 8, No. 2. Oct. 1956.

³ M. Grünhut, 'Penal Reform—A Comparative Study', pp. 305–7. (O.U.P. 1948).

back as 1936⁴, and an overall legal sanction for the making of social enquiries by probation officers is given in the 5th Schedule to the Criminal Justice Act, 1948 (para. 5) '... it shall be the duty of probation officers ... to enquire, in accordance with any directions of the court, into the circumstances or home surroundings of any person with a view to assisting the court in determining the most suitable method of dealing with his case. ...' The right to remand for such enquiries after conviction in the Magistrates' Courts is contained in Section 25 of the same Act, superseded by Section 14 of the Magistrates' Courts Act, 1952.

In England, the 'presumption of innocence until guilt is established by due process of the law'⁴ is such a strong one, that objections have been quite rightly raised concerning the making of any enquiries into an offender's circumstances and history until guilt has been established. As Grünhut says '... in some ways post trial enquiries facilitate the probation officer's approach ... the fight is over, and the offender and his family can be expected to co-operate in a fresh start. ...' It is not surprising, however, to find that a very large number of 'pre-trial' investigations are made, with apparent satisfaction to all concerned. The reasons for this are not hard to find. Long delays may occur, for instance, between committal for trial to Quarter Sessions or Assizes, and if a plea of 'Guilty' is likely to be entered, then it is often assumed that no objection will be raised to the making of enquiries, thus saving further remands for postponement of sentence either on bail or in custody. Administratively convenient though this may be, one awaits the day when perhaps a Judge will query the right or authority for making these pre-trial enquiries. Not infrequently, it is the custom in the Magistrates' Courts for the probation officer to see all defendants briefly before the case is heard, pleas of 'Not Guilty' usually being exceptions to this rule. Whilst it can be argued that this is sometimes a helpful service to a court, it is perhaps more true to say that a few hurried words with a defendant in a cramped cell below the court or in an adjacent police house or station are hardly likely to form the basis of what should be an objective and perhaps detailed enquiry. Some courts appear to be better than others in exercising their right to remand for enquiries, and it seems that by a gradual educative process there will in time be an increasing tendency to remand for enquiries in all doubtful cases. A foreign visitor to our courts might be very well impressed by the fairness of a 'trial by jury' with its elaborate speeches for defence and prosecution and the Judge's summing-up. He might, however, well do something more than raise an eyebrow, when, after a trial lasting perhaps for some days, the defendant's future after conviction was possibly decided in a matter of minutes. It seems to be a matter for regret that courts do not exercise their powers to remand for enquiry more fully. Probation officers are accustomed to rendering annual returns to the Home Office showing the number of social enquiries they make for all courts. There is, however, no distinction drawn in these figures between 'post' and 'pre-trial' enquiries, or how intensive the particular enquiry was, ranging as it may from five minutes in the cells to a full-scale enquiry. One imagines that much useful information might be obtained regarding sentencing policies from a more detailed interpretation of these figures.

⁴ Departmental Committee's Report on the Social Services in Courts of Summary Jurisdiction, 1936. H.M.S.O. (Cmd. 5122).

The actual content of a probation officer's social enquiry for a court is a matter of much controversy. By the very nature of the work involved, there can be no hard and fast rules as to what is appropriate and what inappropriate, since individual cases offer such variety, and courts up and down the country have differing standards. An officer making an enquiry for his own court or courts will, in the passage of time, get to know very well what is required of him, and what he may say with due propriety. He may, however, not be so fortunate if he has to attend an 'outside' court where the vagaries of the particular bench or chairman are not known to him. Experiences of this sort can be quite disturbing to an officer, particularly if he is inexperienced, and perhaps diffident in his approach. Since no hard and fast rules apply for the most part to what he may or may not say, the officer must rely to a large extent on the knowledge and example of colleagues. The very vexed question as to whether an officer should express an opinion or make a recommendation has received so much attention recently that this aspect will be considered more fully later. Suffice to say at this stage that, whatever an officer says or does, he should not arrogate to himself the final function of the judiciary, i.e., the imposition of sentence. How far, however, one can separate an opinion from a recommendation is a matter for considerable debate. C. L. Burgess⁵, Clerk of the Peace, County of London Sessions, states that in his opinion '... one should remember that probation reports, whether oral or written, are essentially for the use of the Judges who are in the vast majority of cases human beings with intelligence who want to know the truth about the prisoner and his surroundings from an independent trained source, so that they may act in a human way compatible with justice. . . .' Underlying an officer's very natural anxieties at giving reports in *Higher Courts* is the fundamental difficulty of reconciling in his own mind what he believes to be in the best interests of the offender, and society's anticipation of what is right and just in determining punishment—a matter often determined by his own attitude to authoritarian figures.

These difficulties achieved some prominence recently in a case that received a great deal of publicity in the Press, and because the case seems to raise important issues, the circumstances will be examined in some detail. A man appeared before a Magistrates' Court on a charge of attempted suicide and received six months imprisonment. At that Court, a report from an 'outside' probation officer had been submitted. The defendant gave notice of appeal and in due course the case was heard before the Appeals Committee of the County Quarter Sessions. As is customary, all the relevant documents were before the higher court, including the report by the probation officer. At the Appeals Committee, a passage in this report came to the notice of the Chairman, and on the following day several leading newspapers, including *The Times* and the *Manchester Guardian*, carried reports of the Chairman's remarks. The passage of the probation officer's report that is material included the remarks '... unless the accused can be compelled to accept rehabilitation at some training centre I am of the opinion that a term of imprisonment is the only alternative to bring him to his senses. . . .' The learned Chairman asked what justification there was in law for such an observation from a probation officer, and also went on to make certain comments of a purely local

⁵ See: C. L. Burgess, letter in *Probation: J. of National Association of Probation Officers*. Vol. 8, No. 2. p. 29. June 1956.

nature that need not concern us here. The National Association of Probation Officers issued a statement to the Press which was borne by many of the papers the following day—its general purport being that the probation officer concerned had acted quite within his rights as he had intimate knowledge of the offender and was in a very good position to assess his likely response to supervision. Various comments followed the publication of this statement including support from a Clerk to the Justices⁶; the content of the Chairman's remarks and the Association's reply were also the subject of comment in the *Justice of the Peace*, *The Magistrate*, and *The Law Journal*. In general, there appeared to be agreement that a probation officer should indicate quite clearly what he felt in a case where he had intimate knowledge of the offender. Finally, the discussion was most interestingly commented on by the Lord Chief Justice (Lord Goddard) who referred to the controversy in an address given to the Magistrates' Association '... if you are asking a probation officer for his opinion, surely, it is right that he should state his opinion quite frankly to you, and if he thinks *from his knowledge* (my italics) of the boy or man that prison is the only thing ... why in Heaven's name should he not be allowed to mention it? ... to say it is ... not according to law appears to me to be nonsense ... if he says his opinion is that prison is the only thing, it may be that you will differ from that; the decision is yours; you are at perfect liberty to accept or disregard his opinion. ...' Lord Goddard then went on to make reference to the existing powers of magistrates to obtain a probation officer's report under the Criminal Justice Act, and concluded by saying that '... unless you get a full and frank opinion from him, the opinion is worthless. ...'⁷

Probation officers have no doubt gained much moral support from the Lord Chief Justice's remarks. Whilst it is made clear that what he has said is not to be construed as a legal decision or pronouncement, it will no doubt enable probation officers to offer fuller and franker assessments to the courts than hitherto. This in no way detracts from the view, however, that probation officers should be circumspect in the manner in which they present their reports. Very often, a great deal can be judged by an intelligent bench by what has been left unsaid rather than said. Opinions, and even recommendations, can often be put in a way that avoids critical comment or overt disapproval in court. It is indeed most unsatisfactory, both for the officer and for the prospective probationer, if the officer and the bench are involved in an acrimonious argument over functions.

It is appropriate at this stage to turn to the very important question of how social enquiries should be presented to the courts. It is a tenet of English justice that anything said in courts that is in the nature of evidence must be said on oath, since the defendant has the right to cross-examine witnesses and to question what is being said about him. This seems to be valid up to a certain point, but much of what a probation officer may say in a report does not seem to be strictly evidence in the accepted sense of the word. More point is given to this statement when we consider that, not infrequently, probation officers present to courts reports prepared by colleagues, where they cannot properly be cross-examined on something produced by someone else. Practice concerning the giving of reports on oath varies from place to place. Some courts accept the report unsworn if the contents are not

⁶ G. S. Green, Letter to *The Times*, 25.9.56.

⁷ See: *Probation*. J. of the National Association of Probation Officers. Vol. 8, No. 4. December, 1956. p. 58 *et seq.*, for a fuller account of this case.

disputed by the defendant, only swearing the officer if the defendant wishes to query something that has been said about him. Other courts adopt the principle that everything that is said must be on oath—even though this may be nothing more than a few words given verbally to the court after having seen an offender for about two minutes in the cells. In Stone⁸ we find the following ‘... after the Court has decided to convict, evidence which is not based strictly on the law of evidence may be admitted, although not on oath, but made in the presence and hearing of the accused and not challenged by him. In which event the court may take unsworn statements into consideration and no injustice is likely to be done. . . .’ In *R. v. Butterwasser* (1947), III JP 527, when discussing reports on character and antecedents given by police officers, the Lord Chief Justice said they should be sworn on the *voire dire*, the oath being, ‘You shall true answer make to all such questions as the court shall demand of you’. ‘The Court can then demand any information it thinks fit.’⁹ It might be quite appropriate if this practice was to be adopted in all cases where probation officers’ reports are received. This of course would not apply in cases where an officer was bringing a probationer before the court on summons or warrant for breach of a requirement of a probation order, in which case the breach would be required to be proved strictly in accordance with the laws of evidence.

Another issue giving rise to controversy is whether or not a probation officer’s report should be read aloud to the court even if in writing. Section 43 of the Criminal Justice Act appears to make provision for the report not to be read aloud ‘... a copy of the report shall be given by the Court to the offender or his counsel or solicitor. . . .’ (It will be noted that the emphasis is on ‘by the court’ indicating, one feels, that reports are the property of the court, only to be made available when requested by it, and not handed round before or after the hearing by probation officers to various counsel or solicitors—in the writer’s view, a more rigid adherence to this practice makes for greater impartiality.) English justice is quite rightly proud of its traditions of working in the open. Justice done in whispers tends to remind us too much of the Courts of Star Chamber. There are, however, a great many occasions when perhaps more harm than good can be done by a strict insistence on everything in an officer’s report being read aloud. If the report is to constitute a full, objective analysis of the defendant’s history, then the officer has the right to feel that this will not be made the common knowledge and property of all and sundry who may be sitting in court. Certainly, the defendant must be allowed to see what is being said about him and, as has been noted above, must be given an opportunity of refuting it. This does not mean, however, that it has to be read aloud. A great deal of embarrassment might be avoided by all concerned if the practice of not reading the report aloud was observed more frequently. Officers who know beforehand that they may be required to read the full contents of their reports aloud may inhibit what they are going to say to such an extent that all the court finally achieves is a repetition of the police ‘antecedents’.

It is hoped that the foregoing remarks have made it clear that an officer preparing and presenting information for the use of a court must endeavour to achieve

⁸ Stone’s Justices’ Manual. Ed. Whiteside and Wilson. 86th Edition, 1954. Shaw and Sons, and Butterworth and Co., London, 1954.

⁹ See: ‘Presenting a Colleague’s Report’ in *Probation*. J. of the National Association of Probation Officers. Vol. 6, No. 20. p. 236. March 1953.

a balance between what he may consider to be in the best interests of the defendant and what he feels society considers to be appropriate treatment or punishment in a particular case. 'The first need is a wider use by courts of probation officers' home surroundings reports. The opportunity of making these enquiries is the most important single aid to establishing a good casework relationship if the offender is placed on probation. On the other hand, it cannot be overstressed that the probation officer's report to the court is not directed to finding excuses for the offender, or to making a case for placing him on probation; its sole immediate purpose is to help the court reach a wise decision on treatment.'¹⁰

H. A. PRINS.

THE DELINQUENT'S VIEWPOINT

For two winters, I have been occupied in an unusual line of inquiry, studying delinquents in a perspective which is closed to clinical and professional observers. An opportunity was given me of becoming a voluntary worker in an underworld Youth Club, which many Metropolitan magistrates and Court officials credit with a high rate of delinquency.

The overwhelming majority of its members are impeccably non-delinquent; but the Court records of the minority justify all the notoriety the Club has attained. Clifford Shaw noticed in Chicago that, despite wholesale shifts of population over two decades, certain 'areas' of 'deterioration' maintained their high rate of criminal convictions—that the areas themselves seemed to attract delinquency.

That is exactly the conclusion to which a study of this particular Club has forced me. Two other Youth Clubs within 150 yards, serving the adolescents of the locality, have a reputation which no member ever tarnishes; but this institution mysteriously attracts delinquents, not only from the immediate surroundings, but also from other boroughs.

Anything like formal casework—clinical interrogation and the ominous notebook—would at once arouse deep suspicion and stultify my strategy. To see the delinquent from inside, to win his frank and free confidence, an entirely different technique is needed. One must never ask questions or appear inquisitive, nor attempt to force their confidence. The candid disclosures of the Kinsey Reports pre-suppose a mental quality which is utterly alien to the attributes of the Londoner.

One must wait patiently in the hope that the delinquents will one day discard their defences and pretences, and reveal their unglossed attitudes and reactions. Go to the Court with them, and appeal for 'mercy' on their behalf, visit them in the Remand Centre or the Scrubs, and never display the least sympathy with the forces of law and order; and, after some years, you may be admitted to a rare glimpse of the true continuum of the rebellious mind. The shoulder is bared to show the chip, as no suspected ally of authority is ever allowed to inspect it.

From this long and stealthy observation, two conclusions have emerged, luminously clear.

¹⁰ 'Probation Today and Tomorrow' (Notes from the Probation Division of the Home Office). *Howard Journal*. Vol. 9, No. 3. p. 249. Howard League for Penal Reform, London, 1956.

The first is that, as Miss Younghusband so ably argued in this *Journal* of January, 1957, our understanding of delinquents needs complete re-orientation. The strange aura that envelops the machinery of law and order, in the eyes of our incipient rebels, is a region that needs closer investigation. The normal techniques of psychiatrist and statutory official do not lead anywhere near the heart of that country.

It has become my firm conviction that the probation officer, despite the unofficial, altruistic attributes with which the legislature aspired to invest him, has become all of a piece with Miss Younghusband's 'avenging gods'. With the probation officer, however disarming and competent he may be, his charges know for certain surety that they must be ever on the defensive, as cautious and word-watchful as when the uniformed constable is interrogating them.

As a former official of the National Police Court Mission, I believe that this change of demeanour towards the P.O. is partly the consequence of the end of the old voluntary system. The voluntary probation officer of the old days was a private citizen, who interviewed his cases in a private house or a church vestry. The delinquent did not feel on such premises the restraint that inhibits him when he makes his fortnightly visit to a room in the court-building, or to an office that looks like a department of a public organization.

All offenders who have in the last two years discussed the state of probation with me confirm this impression. They remark, ever without shame and sometimes with pride, that they have bluffed and deceived the court or the police or the probation officer. No doubt the probation service is as aware of this attitude as I am. It may not be an original discovery, but it deserves to be put on record as one of the most certain conclusions of my survey.

It would perhaps destroy all my offender's confidence in me, and undermine my listening-post, if I were ever known to communicate some of their disclosures to the officers implicated. I may be guilty, in the sacred cause of social investigation, of compounding felonies and misdemeanours; but I plead in mitigation the possibility that the end may justify the means.

I hope that I do the Probation Service no injustice in suggesting that the offender's reaction to the probation officer is not free from subtlety and complexity.

For instance, one offender, during his term of probation, became involved in three unsavoury incidents, in which he was not necessarily a criminal participant. After his term of probation expired, I learnt that a most satisfactory report about him had been presented to the court. He made no secret among his cronies about his active share in the three incidents in question; and I inquired of him later what comment the probation officer had made about his participation. He retorted with an expletive, 'Do you think I was daft enough to tell him?'

I cite this recollection without comment. If I have defaulted in my social duty by keeping silence, there may be some justification in the special intention of the inquiry. By incurring the suspicion of being an informer and one more satellite of authority, I should run the risk of seeing every delinquent's hand raised against me, and, what is a more serious prospect, his mouth shut whenever I came into sight. I dare not be so communicative even as this if there were the slightest danger that the *Journal* should fall into the hands of any of my case-studies.

W. J. BOLT.

REVIEWS

The Editors regret that, owing to lack of space in this issue and the necessity of relating the contents to the main subject of Probation, they are compelled to hold over the Reviews section until the April number. They hope that authors and publishers will accept their apologies for the delay, which they will do their best to overcome as soon as possible.

ABSTRACTS

(Contributed by J. P. MARTIN and J. C. SPENCER)

PROBATION

WILL C. TURNBLADH *et al.*: Special Number of *N.P.P.A. Journal* on 'Working Conditions of Probation and Parole Officers'. Vol. 3, No. 2, April 1957.

This issue of the *N.P.P.A. Journal* contains nine articles on various aspects of probation and parole work in the United States; as such it provides perhaps the most up-to-date account of the subject now available.

Ben S. Meeker, Chief Probation Officer, U.S. District Court, Northern District of Illinois, Chicago, provides a job analysis of 'Probation and Parole Officers at Work', and discerns four main rôles which they have to fill. The first is the administrative, given this emphasis partly because of the extent to which officers have to work with only nominal supervision, and also because sheer survival on the job depends on their being able to make the most efficient use of their time. The second rôle is that of social investigator; the importance of good pre-sentence investigation being regarded as vital. Law enforcement is placed third in the list, referring in particular to the work of seeing that probation or parole conditions are kept. The trend seems to be away from the imposition of numerous detailed restrictions, and towards more general and positive exhortations. It is stressed that this is dependent on the quality of the officers concerned—'Courts and paroling authorities have discovered that improved selection of probation officers makes it possible to place more discretion in their hands, and that casework services are more effective than mechanical rules'. On the other hand, it is clearly the officer's duty to inform the court on how the probationer is adjusting to supervision. Finally, 'the fourth and most important rôle of the probation officer is that of friendly counsellor, case worker, or guidance officer'. The recognition of probation work as being an aspect of social work has only come

about gradually in the United States. This last point is also discussed by Professor Class, who is particularly concerned with its implications for social work education.

The general background of 'Recruitment and Retention of Personnel' is provided by Ernest F. Witte, who points out that the shortage of qualified workers is common to all branches of social work in the United States, and that the problems of the correctional field are only a facet of this. On the other hand, the British reader can only boggle at the account of 'Methods of Appointing Probation Officers' given by Francis H. Hiller. The problem is largely one of the influence of political appointments to the judicial bench and, in consequence, of extreme insecurity of tenure on the part of the probation officers. Apparently it is still common for probation officers to lose their jobs when a new judge is elected because they are regarded as the spoils of office which have to be given to political supporters. The institution of a 'civil service' procedure can reduce the danger of appointing unsuitable staff, but not entirely eradicate political influence. The position is summed up . . . 'among the *civil service* probation departments of the country are some of the best and *none of the poorest*; among the *non-civil service* departments are some of the best, but a *great many of the poorest*.' In some communities, such as Toledo and Indianapolis, remarkably fine services have been built up, because good judges have been appointed with wide community support. As in so many fields, apathy is the greatest evil.

A different aspect of the problem of appointing probation officers is discussed by Don. J. Hager, Director, Commission on Community Interrelations, American Jewish Congress, in an article on 'Race, Nationality and Religion'. In the first part he reviews a survey of the practices of courts in various states: race was a factor in employment only in some southern states, and in assignment of cases only in some southern and north central states. New York City has a special practice of appointment on a religious basis by quota according to the religious affiliations of the population of the city. The second part of the article analyses the five main arguments used for introducing religious considerations into various aspects of probation work, and points to the falseness of the premises on which most of them are based. It concludes that sectarianism in this sphere breeds at least a superficial conformism, and is an attitude wholly to be deplored.

'Caseloads' are the theme of an article by Hugh P. Reed. Although there are exceptions, the general picture revealed is again one that must make the British probation officer thankful to be on this side of the Atlantic. The blacker side can be shown by two quotations:

'Average supervision caseloads (excluding predisposition investigations) of 135 per officer are not uncommon for large metropolitan adult probation departments. The average adult and juvenile probation and parole caseload in this country is estimated to be 250 per officer. In extreme cases the individual officer caseload has exceeded 1,000 per officer! In a one-man department I visited, the probation officer was responsible for 900 felony cases—and he gave only part time to his probation work, because he also had his grocery store to manage.'

'... the majority of departments in this country still do not even approach the standard. In fact, gross understaffing in many of these departments has reduced the quality and quantity of their work to the point where

lack of supervision of probationers and parolees constitutes a menace to themselves and to society, and makes a farce of probation and parole.'

Other articles in the issue relate to salaries and office conditions. Too detailed to abstract, they reveal enormous variations between areas, ranging from the excellent conditions of Toledo to the worst of the counties.

All in all this is an important issue of an excellent journal.

J. P. M.

HERMANN MANNHEIM: 'Das englische Probation System vom Standpunkt des Gesetzgebers und Richters'. *Bewährungshilfe*, October 1956, 3, No. 2, 101-119.

HERMANN MANNHEIM: 'Das englische Probation System vom Standpunkt des Bewährungshelfers und Sozialarbeiters', *Bewährungshilfe*, April 1957, 3, No. 4, 235-250.

In these two lectures, delivered on behalf of the British Foreign Office before judges, public prosecutors, University teachers and probation officers in various cities of Western Germany, the author deals with the English probation system from the point of view of the legislator, judge, probation officer and social worker. After sketching its historical roots, he points out that the system has discarded the idea of punishment probably more strongly than any other comparable system. Probation in Britain means more than merely one way of dealing with offenders; it rather means a certain mental attitude, a confession of faith. Has this attitude, this sense of vocation, been preserved throughout the period of growth from the first small body of perhaps twelve apostles, as it were, to the present regiment of more than twelve hundred full-time probation officers? On the whole, the author thinks, the service has successfully overcome these growing pains, mainly thanks to three factors: firstly, its centralized system of administration, centralization happily tempered by adequate latitude given to local influences; secondly, better selection of cases for probation, in spite of excessive variations in the use of probation by different courts and too many short prison sentences and fines; and, lastly, improved methods of selection and training of probation officers.

The last-mentioned point is taken up at greater detail in the second lecture. After stressing the idea of continuity of the English probation officer's work, ranging from the stage of preliminary investigations to after-care, the author refers to the growing difficulties of recruitment, in part due to the misproportion between salaries and requirements; to the improvements in the Probation Training Scheme in the past twenty years; and especially to the simultaneous changes in the character of probation work from the initial stage of a voluntary, charitable service to the second phase of rather impersonal professionalism and finally to the present stage which tries to combine the two preceding ones—all this related to the ever-growing complexity of the casework required in view of the increasing sophistication, better education and economic position and, consequently, changing needs of offenders. Attention is drawn to such recent developments as the courses in Applied Social Science, to certain new ideas in the In-Service Training schemes, and to the special course in group therapy. Lastly, problems concerning the relationship between judges and magistrates, on the one hand, and probation officers, on the other, are discussed.

H. M.

GENEVIEVE C. O'CONNELL: 'Casework with the Female Probationer', *N.P.P.A. Journal*, 3, 1, January 1957, pp. 13-20.

The principal problem peculiar to casework with female offenders is the double standard of morality held by the public and some workers in the correctional field. Readiness to condemn the female offender and unwillingness to understand or help her are greater than with male offenders. Hence the 'non-judgemental' element of the caseworker's approach is more important than ever. Other special problems are presented by the fact that female offenders often come from cultural fringe groups and their standards of dress, hygiene etc., may be unacceptable to employers. Furthermore, they find the economic adjustment difficult because they can usually earn 'much more, much faster, illegally'. The emotional effects of menstruation also have considerable influence in situations which are already unstable.

J. P. M.

MARGARET A. TEACHOUT: 'Problems of Women Parolees', *N.P.P.A. Journal*, 3, 1, January 1957, pp. 31-8.

In a parole setting women are often handicapped by the attitude of dependency expected of their sex in modern society. Their tendency to react quickly and aggressively to emotional stimuli is a major problem in building up a stable way of life. Getting jobs is often exceptionally difficult because of the double standard which condemns female offenders so much more severely than men. Domestic work is usually obtainable but involves the risk of exploitation. In helping parolees to get jobs it is essential to pay great attention to details—such as grooming—and to indicate that someone is prepared to accept them in society again.

J. P. M.

RALPH W. ENGLAND, JR.: 'What is responsible for Satisfactory Probation and Post-probation Outcome?' *The Journal of Criminal Law, Criminology and Police Science*, 1957, 47, 667-676.

This study is of recidivism among a sample of adult probationers sentenced in Federal Court in the Eastern District of Pennsylvania, from the files of 490 people who successfully finished probation between 1939 and 1944. By 1951, 17.7 per cent. had been reconvicted. He concludes that the 490 probationers were not subject to intensive case-work procedures, but simply exposed to routine supervision. He favours the explanation that rates of recidivism are not significantly associated with the quality of probation. There are, however, other influences than the quality of case-work in operation in a probation experience. It is possible that the ordinary selectivity of clients and the normal routines may provide the real clues to the effectiveness of probation.

J. C. S.

ALFRED MURRAH: 'Prison or Probation—Which and Why?', *The Journal of Criminal Law, Criminology and Police Science*, 1956, 47, 451-456.

This article is an address by Judge Murrah of the U.S. Court of Appeals to a joint meeting of the National Probation and Parole Association and the American

Bar Association. The author indicates an aroused interest in problems of sentencing in the U.S.A. Material on the factual background of the offender and careful diagnostic study are required as well as the judicial acumen of the sentencing judge. More resources for the probation system are needed.

J. C. S.

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EDITED BY JAMES DREVER

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CONTENTS

Editorial. Scientific Theory and Psychosis: the Model Psychosis Experiment and its Significance, by Peter McKellar; Communication in a Mental Hospital Population, by L. O'Connor, G. M. Carstairs, K. Rawnsley; The LSD Treatment of Chronic Psychoneurotic Patients Under Day Hospital Conditions, by Joyce Martin; Persistent Senile Confusion: a Study of Fifty Consecutive Cases, by L. J. Cosin, M. Mort, F. Post, C. Westropp, M. Williams; Experiences of the Community Treatment of Neurosis in a Mental Hospital, by M. M. Glatt, K. J. Weeks, L. Stewart, S. Whiteley; Reform in the Mental Hospital: a Critical Study of a Programme, by B. H. Clark and R. Hoy; Trends in Group Psychotherapy in The United States, by Hugh Mullan; Differential Treatment Groups in Guidance Counselling Psychotherapy and Psychoanalysis, by Haim Ginott; Book Reviews; News Notes.

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